

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

AMANDA LOVE and WINGO SMITH,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

PENNSYLVANIA HIGHER
EDUCATION ASSISTANCE AGENCY
d/b/a FEDLOANS SERVICING, INC.,

Defendant.

CIVIL ACTION NO.

NOTICE OF REMOVAL

Defendant Pennsylvania Higher Education Assistance Agency (“PHEAA”) hereby gives notice under 28 U.S.C. § 1446 of its removal of this action from the State Court of Fulton County in the State of Georgia to the United States District Court for the Northern District of Georgia. Removal is based on 28 U.S.C. §§ 1331, 1441, and 1442, and is proper for these reasons:

I. BACKGROUND

1. On April 12, 2019, Plaintiffs Amanda Love and Wingo Smith (collectively “Plaintiffs”) commenced this action by filing a Complaint (the “Complaint”) in the State Court of Fulton County in the State of Georgia, Civil Action Number 19EV002000. The Complaint is captioned: *Amanda Love and*

Wingo Smith, Individually and on behalf of all others similarly situated v. Pennsylvania Higher Education Assistance Agency d/b/a FedLoans Servicing, Inc.

A true and correct copy of the Complaint, along with all of the process, pleadings, and orders received by PHEAA to date, are attached as Exhibit A.

2. Plaintiffs are federal student loan borrowers currently in repayment. PHEAA is a student loan servicer. Relevant here, PHEAA services student loans issued by the federal government under the William D. Ford Direct Loan Program, 20 U.S.C. § 1087a *et seq.* (“Direct Loans”). PHEAA also administers the Public Service Loan Forgiveness Program (“PSLF” or the “PSLF Program”). Under the PSLF Program, the federal government may forgive the remaining balance of a borrower’s Direct Loans after they satisfy particular statutory and regulatory requirements, including making qualifying payments for ten years. *See Compl.* at ¶ 19.

3. Borrowers seeking loan forgiveness under the PSLF Program submit Employment Certification Forms (“ECF”) to verify their employment qualifies under the PSLF Program requirements. *See id.* at ¶ 25.

4. Plaintiff Love alleges that she took out multiple federally backed loans to fund her undergraduate and law school education, which were eventually consolidated into three Direct Loans. *See id.* at ¶ 39.

5. Plaintiff Love alleges that from February of 2009 to June of 2010, she worked for the Louisiana District Attorneys Association. *See id.* at ¶ 40. She submitted an ECF for that position to PHEAA in June 2012. *See id.* at ¶ 41. Purportedly, PHEAA sent Plaintiff Love a letter confirming her employment at the Louisiana District Attorneys Association qualified for the PSLF Program. *See id.* at ¶ 42. In 2018, Plaintiff Love alleges, PHEAA sent her a letter stating that “this approval was issued in error because we determined that the [Louisiana District Attorneys Association] does not provide a qualifying service as its primary purpose for the purposes of the PSLF program.” *See id.* at ¶ 45.

6. Plaintiff Love claims she has been continuously employed from July 2010 until filing this Complaint by “various other approved public service groups,” including the East Baton Rouge Public Defender’s Office, Disability Rights Texas, the Federal Public Defender’s Office for Southern District of Texas, the DeKalb County Public Defender, and the Georgia Department of Law. *See id.* at ¶ 46.

7. Plaintiff Love alleges PHEAA began servicing her loans in 2012 and that it failed to properly credit multiple payments she made before June 2012. *See id.* at ¶¶ 49, 53. She also claims to have made an advanced payment on November 20, 2012, for which she was not credited because it was “not within the billing period.” *See id.* at ¶¶ 54-55. Plaintiff Love contends PHEAA failed to properly

account for the actual number of PSLF qualifying payments she made. *See id.* at ¶¶ 56-61.

8. Plaintiff Smith alleges that he took out multiple federally backed loans to fund his undergraduate and law school education, which were eventually consolidated into two Direct Loans. *See id.* at ¶ 66.

9. Plaintiff Smith claims that he worked for Georgia Legal Services Program from July 2008 to May 2015, and for Atlanta Legal Aid Society from June 2015 to filing of this Complaint. *See id.* at ¶ 67.

10. Plaintiff Smith contends that his loans were previously serviced by the Missouri Higher Education Loan Authority (“MOHELA”), and that he made full, on-time qualifying payments to MOHELA. *See id.* at ¶¶ 68, 69.

11. He alleges that PHEAA failed to count the qualifying payments made to MOHELA. *See id.* at ¶ 70. Further, Plaintiff Smith alleges PHEAA has only given him credit for 11 PSLF qualifying payments, though he has consistently made qualifying payments for ten years. *See id.* at ¶ 71.

12. Plaintiff Smith contends that in February 2018, PHEAA reported to the National Student Loan Data System that he had fallen behind on his loan payments, despite his having never been delinquent. *See id.* at ¶¶ 75, 76.

13. In May 2018, the financial aid department of the University of Illinois purportedly contacted Plaintiff Smith to inform him that the school had received notice he was behind on his federal student loans. *See id.* at ¶ 77. Plaintiff Smith was supposedly “shocked and embarrassed” by the communication. *Id.* at ¶ 78.

14. Plaintiffs additionally purport to bring claims on behalf of four putative classes made up of Georgia residents with federal student loans serviced by PHEAA. *See id.* at ¶ 80. First, the “Georgia Libel Class” includes borrowers who “had their payment history falsely presented to a third party as being delinquent, in default, or past due.” *Id.* Second, the “Georgia ECF Class” includes borrowers who “received approval of their employment certification form (ECF) for having qualifying employment pursuant to the PSLF program, but at a subsequent date had their employment decertified by PHEAA and declared unqualifying for the PSLF program.” *Id.* Third, the “Georgia Audit Class” includes borrowers who “made qualifying payments under the PSLF program to a servicer other than PHEAA, and subsequently failed to receive credit from PHEAA for those qualifying payments made to other servicers.” *Id.* Fourth, the “Georgia Prepayment Class” includes borrowers who “made qualifying payments under the PSLF program but did not receive proper credit for those qualifying payments because they were made early and deemed not within the billing period.” *Id.*

15. Based on the above alleged conduct, Plaintiffs purport to raise eight causes of action against PHEAA: three claims for common law negligence, *see id.* at ¶¶ 91-137, three claims for breach of contract based on the servicing contract between PHEAA and the Department of Education, alleging Plaintiffs were intended third party beneficiaries of this contract, *see id.* at ¶¶ 138-163, one claim for libel under Georgia Statute § 51-5-1 *et seq.*, *see id.* at ¶¶ 164-168, and one claim for promissory estoppel under Georgia Statute § 13-3-44, *see id.* at ¶¶ 169-174.

II. BASES FOR REMOVAL JURISDICTION

16. As discussed below, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, and 1442

A. Federal Officer Removal

17. This Court has removal jurisdiction over the instant matter under 28 U.S.C. § 1442(a)(1), which provides for removal of any “civil action [. . .] against or directed to [. . .] any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office[.]” Removal under § 1442(a)(1), also known as federal officer removal, is available to a federal contractor when it can demonstrate that: “First, [...] it is a person within the meaning of the statute who acted under a federal officer. § 1442(a)(1). Second, [...] it performed the actions for

which it is being sued under color of federal office. [...] Third, [it] must raise a colorable federal defense.” *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1142 (11th Cir. 2017) (citing *Magnin v. Teledyne Cont’l Motors*, 91 F.3d 1424, 1427 (11th Cir. 1996)); *see also Mesa v. Cal.*, 489 U.S. 121, 124-36 (1989). PHEAA satisfies these requirements, which the Eleventh Circuit gives “a broad reading[.]” *Caver*, 845 F.3d at 1145 (citing *Fla. v. Cohen*, 887 F.2d 1451, 1454 (11th Cir. 1989)).

18. As a threshold matter, PHEAA is a federal contractor for purposes of the Complaint. PHEAA services Plaintiffs’ Direct Loans and administers the PSLF Program at the direction of the United States Department of Education (the “Department”). *See* Department Servicing Contract (the “Contract”), attached as Exhibit B; *see also* Compl. ¶¶ 34-36.

19. PHEAA satisfies the requirement of acting under the direction of a federal officer. The Department, rather than self-service the Direct Loans it issues, contracts with third-party servicers to perform that function. *See* 20 U.S.C. § 1087f(a)(2). PHEAA, as one of the Department’s third-party servicers, services the Direct Loans and administers the PSLF Program. *See* Contract, Ex. B. Thus, to the extent that PHEAA is liable to Plaintiffs, that liability arose by virtue of actions performed at the direction of a federal officer. *See Caver*, 845 F.3d at 1144 (holding that defendant was acting under a federal officer when it “help[ed] assist or carry out

the duties of [the Department of Agriculture] and work[ed] closely with [the Department of Agriculture] to fulfill the congressional objective”).

20. Several courts have upheld removal of actions against federal student loan servicers under 28 U.S.C. § 1442(a)(1) and denied remand motions. *See, e.g., Cobb v. Gc Servs.*, No. 3:16-3764, 2016 U.S. Dist. LEXIS 168928, at *5 (S.D. W. Va. Dec. 7, 2016) (upholding federal student loan servicer’s removal of action to federal court under § 1442(a)(1) because it acted under direction of federal officer when it “helped and assisted the [Department] in its loan collection activities”); *Smith v. Collection Techs., Inc.*, No. 2:15-cv-6816, 2016 U.S. Dist. LEXIS 36845, at *6-16 (S.D. W. Va. March 22, 2016) (same).

21. PHEAA performed the acts for which it is being sued under color of federal office. Plaintiffs’ claims all relate to PHEAA’s servicing of their Direct Loans under the PSLF Program, which PHEAA undertakes at the direction of the Department of Education. As a Department loan servicer, PHEAA communicated with borrowers on the Department’s behalf. Department guidelines heavily inform those communications. Thus, to the extent Plaintiffs claim PHEAA is liable by virtue of communications it made, or should have made, to Plaintiffs on behalf of the Department, PHEAA’s actions undoubtedly “relate to” its work for the Department. There is a causal nexus between Plaintiffs’ state law claims and

PHEAA's conduct under color of federal office. *See Caver*, 845 F.3d at 1145 (“[T]he acts for which [defendant] is being sued occurred because of [defendant’s] performance of its duties and loan agreement with [the Department of Agriculture].”); *Hepstall v. Humana Health Plan, Inc.*, No. 18-0163, 2018 U.S. Dist. LEXIS 112727, at *17 (S.D. Ala. July 3, 2018) (“Because [plaintiff’s] claims are intertwined with Humana’s obligations pursuant to regulations that govern its role in administering Part C Medicare claims, the Court finds that the causal nexus requirement has been met.”); *see also Cobb*, 2016 U.S. Dist. LEXIS 168928, at *5-6 (finding causal nexus between student loan servicer’s alleged violations of West Virginia Consumer Credit and Protection Act and Department instructions when servicer contracted with the Department to service federal loans and servicer’s actions were consistent with contract).

22. Finally, PHEAA has a colorable federal defense to Plaintiffs’ claims. PHEAA—on behalf of the Department—services Plaintiffs’ Direct Loans and administers the PSLF Program. Insofar as Plaintiffs claim that PHEAA is liable because of its administration of that program, it is immune from suit on the basis of derivative sovereign immunity, *see Yearsley v. W. A. Ross Constr. Co.*, 309 U.S. 18, 21 (1940) (“Where an agent or officer of the Government purporting to act on its behalf has been held to be liable for his conduct causing injury to another, the ground

of liability has been found to be either that he exceeded his authority or that it was not validly conferred.”); *Campbell v. Gen. Dynamics Info. Tech.*, 888 F.3d 640, 646-51 (4th Cir. 2018) (affirming dismissal of Telephone Consumer Protection Act claim for lack of subject matter jurisdiction on the basis of derivative immunity), and the federal contractor defense. *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988); *Hudgens v. Bell Helicopters/Textron*, 328 F.3d 1329, 1333-34 (11th Cir. 2003) (extending *Boyle* to service contracts); *Carley v. Wheeled Coach*, 991 F.2d 1117, 1119-23 (3d Cir. 1993) (extending *Boyle* to civilian contractors). The colorable federal “defense need only be plausible; its ultimate validity is not to be determined at the time of removal.” *Magnin* 91 F.3d at 1427; *See also Bennett v. MIS Corp.*, 607 F.3d 1076, 1089 (6th Cir. 2010) (same); *United States v. Todd*, 245 F.3d 691, 693 (8th Cir. 2001) (same). “The law does not require that the removing defendant virtually win his case before it can be removed.” *Caver*, 845 F.3d at 1145. PHEAA therefore presents a colorable defense sufficient for removal. *See, e.g., Cobb*, 2016 U.S. Dist. LEXIS 168928, at *6-10 (finding federal student loan servicer’s federal contractor defense colorable).

23. PHEAA satisfies each requirement for federal officer removal under 28 U.S.C. § 1442(a)(1).

B. Federal Question Jurisdiction

24. A federal question provides the second independent basis for jurisdiction over Plaintiffs' claims. Under 28 U.S.C. § 1331, federal district courts possess original jurisdiction over "civil actions arising under the . . . laws . . . of the United States." While Plaintiffs' claims do not rest on federal causes of action, their Complaint nonetheless falls into the category of cases over which the federal courts have jurisdiction.

25. The Supreme Court has established a four-part test for federal jurisdiction over state-law claims. *See, e.g., Gunn v. Minton*, 568 U.S. 251, 258 (2013). Under this test, a district court possesses federal jurisdiction over a state-law claim when a federal issue is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Id.* Plaintiffs' claims satisfy this test.

26. Plaintiffs' claims meet the first two prongs because the substance of their Complaint rests on the premise, clearly stated in the first sentence of their Complaint, that "Defendant failed to properly perform their duties as servicer for the Public Service Loan Forgiveness Program[.]" Compl. at ¶ 1. The trope that PHEAA failed to follow federal laws or regulations repeats throughout the Complaint. *Id.* at ¶¶ 64, 74, 92, 104, 108, 120, 124, 135, 141-43, 149-51, 157-161. As a result,

vindication of the claims—as framed by Plaintiffs—will necessarily require the parties to litigate, and the Court to interpret, the requirements of the PSLF Program under federal law and regulations. *See* 20 U.S.C. § 1087e(m); 34 C.F.R. § 685.219; *see also Davis v. GMAC Mortg. LLC*, No. 4:11-cv-95, 2012 U.S. Dist. LEXIS 33351, at *11 (M.D. Ga. Mar. 13, 2012) (finding a federal issue was raised by a breach of contract claim where “[t]he source of the contractual obligation that was allegedly breached is the federal regulation applicable to refinance loans guaranteed by the VA”).

27. Plaintiffs’ claims also satisfy the substantiality prong. The Court’s inquiry into this prong focuses on “the importance of the issue to the federal system as a whole.” *Gunn*, 568 U.S. at 260. By this measure, Plaintiff’s’ claims arise under federal law. Interpretation of the laws and regulations governing the PSLF Program implicates significant federal interests. As an initial matter, federal student loans comprise the federal government’s largest financial asset. *See* <https://www.investopedia.com/articles/personal-finance/081216/who-actually-owns-student-loan-debt.asp> (last visited May 14, 2019). As such, the federal government has a strong interest in the way these loans, and attendant forgiveness programs, are administered. The Department of Education has argued for federal preemption in this area. *See generally* Federal Preemption and State Regulation of

the Department of Education’s Federal Student Loan Programs and Federal Student Loan Servicers, 83 Fed. Reg. 10619 (Mar. 12, 2018). Given these interests, the federal questions raised by Plaintiffs’ claims are undoubtedly substantial. *Accord Grable & Sons Metal Prods. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314–16 (2005) (national interest in resolution of federal tax issue in federal court rendered issue “substantial”); *Davis*, 2012 U.S. Dist. LEXIS 33351, at *16 (finding substantial federal issues were raised where the “applicable regulation [was] an integral part of the federal regulatory scheme for VA guaranteed loans”).

28. Finally, the fourth prong—concerning federal-state balance—leans heavily towards federal question jurisdiction. The implementation of a federal loan forgiveness program is not an area over which states exercise “a special responsibility.” *Gunn*, 568 U.S. at 264 (quoting *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 460 (1978)). In fact, courts regularly exercise federal jurisdiction over state-law claims that “involve[] a federal contractor’s implementation of a federal program.” *One & Ken Valley Hous. Grp. v. Me. State Hous. Auth.*, 716 F.3d 218, 224-26 (1st Cir. 2013) (exercising federal jurisdiction over breach-of-contract action that required interpretation of Section 8 and HUD’s implementing guidance); *Evergreen Square of Cudahy v. Wis. Hous. & Econ. Dev. Auth.*, 776 F.3d 463, 466-

69 (7th Cir. 2015) (same). And, as discussed above, the federal interest is particularly pronounced in this case.

29. Plaintiffs' claims require the Court and the Parties to address the meaning of federal law and regulations. Any interpretation of these provisions affects the interests of the federal government itself and the interests thousands of federal student loan borrowers. As such, the Court possesses original jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331.

C. Diversity Jurisdiction

30. This Court also has jurisdiction under 28 U.S.C. § 1332(a)(2), which provides district courts with original jurisdiction over civil actions where “the matter in controversy exceeds the sum or value of \$75,000 exclusive of interests and costs, and is between – citizens of different states.” 28 U.S.C. § 1332(a)(2). Here, diversity exists and the amount in controversy for each named plaintiff exceeds the \$75,000 statutory minimum.

31. Removal under 28 U.S.C. § 1441 is appropriate because original jurisdiction is proper under 28 U.S.C. § 1332(a)(2), and because PHEAA is not a citizen of the forum state, Georgia.

32. For purposes of diversity, a person's domicile establishes their citizenship. *See McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002) (“Citizenship is equivalent to ‘domicile’ for purposes of diversity jurisdiction.”).

33. Plaintiffs allege that they are residents of the state of Georgia. Compl. at ¶¶ 2-3. Plaintiffs have brought this case as a class action on behalf of four putative classes, all made up of subsets of “Georgia residents with federal student loans serviced by PHEAA.” *Id.* at ¶ 80.

34. As residents of Georgia, Plaintiffs and all members of the putative classes are citizens of Georgia. *See Porter v. Ocwen Loan Servicing, LLC*, No. 1:18-cv-01253, 2018 U.S. Dist. LEXIS 222022, at *6 (N.D. Ga. Oct. 16, 2018) (“Plaintiff is a citizen of Georgia for purposes of establishing diversity because he admits in his Complaint that he is a resident of Georgia.”)

35. 28 U.S.C. § 1332(c)(1) provides that “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”

36. PHEAA is a public corporation, 24 P.S. § 5101, with a principal place of business in Pennsylvania. Though PHEAA has previously contended that it is a state agency, that argument has been rejected by other courts. *See Pa. Higher Educ. Asst. Agency v. NC Owners*, 256 F. Supp. 3d 550 (M.D. Pa. 2017); *United States ex*

rel. Oberg v. Pa. Higher Educ. Asst. Agency, 804 F.3d 646, 675–77 (4th Cir. 2015); *Lang v. Pa. Higher Educ. Asst. Agency*, 201 F. Supp. 3d 613, 625–28 (M.D. Pa. 2016); *Pele v. Pa. Higher Educ. Asst. Agency*, 13 F. Supp. 3d 518 (E.D. Va. 2014), *aff'd*, 628 F. App'x 870, 872 (4th Cir. 2015); *Commw. v. Pa. Higher Educ. Asst. Agency*, No. 1784-cv-02682, 2018 Mass. Super. LEXIS 14, at *3–20 (Mass. Sup. Ct. Feb. 28, 2018). The foregoing decisions hold that PHEAA is not a state agency. Accordingly, PHEAA is deemed to be a citizen of Pennsylvania and complete diversity exists between it and Plaintiffs, including the putative classes.

37. Under 28 U.S.C. § 1332(a), the amount in controversy must exceed \$75,000 and the removing party bears the burden of showing that the amount in controversy requirement has been met. *Flowers v. Cypress Ins. Co.*, No. 3:14-cv-126-TCB, 2014 U.S. Dist. LEXIS 193758, at *3 (N.D. Ga. Oct. 7, 2014) (citing *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001)). Despite that burden, “a removing defendant is not required to prove the amount in controversy beyond all doubt or to banish all uncertainty about it.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010).

38. If, as here, a plaintiff has not pled a specific amount of damages, removal is proper where “it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.” *Williams*, 269 F.3d at 1319.

If the amount in controversy is not facially apparent from the complaint, “the court should look to the notice of removal[.]” *Id.*

39. Additionally, “the Court has discretion to rely on the allegations on the face of the complaint and to ‘make reasonable deductions, reasonable inferences, or other reasonable extrapolations’ in determining whether a complaint meets federal jurisdictional requirements.” *Flowers*, 2014 U.S. Dist. LEXIS 193758, at *5 (quoting *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061 (11th Cir. 2010)).

40. Here, the amount in controversy for each plaintiff plainly exceeds the \$75,000 statutory minimum. Both plaintiffs allege they took out multiple Direct Loans to fund their undergraduate and law school educations. As of 2017, the average law student graduated with \$139,000 in student loan debt. *See* <https://www.earnest.com/blog/which-graduate-degree-gets-you-out-of-debt-the-fastest/> (last visited May 14, 2019). This amount alone is enough for each Plaintiff to meet the statutory minimum.

41. Moreover, Plaintiffs seek attorneys’ fees. Compl. at ¶ 174. Courts consider attorneys’ fees in determining the amount in controversy. *See, e.g., Spielman v. Genzyme Corp.*, 251 F.3d 1, 7 (1st Cir. 2001) (claim for attorneys’ fees should be taken into account in determining amount in controversy).

42. Because Plaintiffs, including the putative classes, are completely diverse in citizenship from PHEAA and the amount in controversy exceeds \$75,000, this Court has jurisdiction under 28 U.S.C. § 1332, and removal jurisdiction under 28 U.S.C. § 1441.

D. Diversity Jurisdiction Under the Class Action Fairness Act

43. Finally, this Court has jurisdiction under the provisions of the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2), which provides district courts original jurisdiction over civil actions where the “matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which [. . .] any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2).

44. As argued, *supra*, ¶¶ 32-36, complete diversity exists between Plaintiffs, including the putative classes, and PHEAA.

45. CAFA’s \$5 million threshold amount in controversy is similarly satisfied. “District courts may make ‘reasonable deductions, reasonable inferences, or other reasonable extrapolations from the pleadings to determine whether it is facially apparent that a case is removable.’” *Meeks v. Am. Express Centurion Bank, Inc.*, No. 1:10-cv-3336, 2011 U.S. Dist. LEXIS 163371 (N.D. Ga. Apr. 6, 2011) (denying motion to remand a class action suit over which the federal district court

had diversity jurisdiction under CAFA) (quoting *Roe*, 613 F.3d at 1061). The amount in controversy logically exceeds the \$5 million statutory minimum. Plaintiffs are bringing claims on behalf of four classes made up of certain sets of all “Georgia residents with federal student loans serviced by PHEAA.” Compl. at ¶ 80. PHEAA services loans for thousands of borrowers in the State of Georgia with multi millions of dollars in aggregate student loan debt.

46. As discussed *supra* at ¶ 41, Plaintiffs also seek attorneys’ fees and, given the likely size of the putative classes of Georgia borrowers, the attorneys’ fees will be substantial. *Frederico v. Home Depot*, 507 F.3d 188, 197 (3d Cir. 2007) (“Plaintiff also seeks attorneys’ fees, which can exceed six figures in a class action and are properly aggregated and considered for purposes of determining the amount in controversy under [CAFA].”).

47. Because Plaintiffs, including the putative classes, are completely diverse in citizenship from PHEAA and the amount in controversy exceeds \$5 million, this Court has jurisdiction under 28 U.S.C. § 1332(d), and removal jurisdiction under 28 U.S.C. § 1441.

III. VENUE

48. Under 28 U.S.C. §§ 1441(a) and 1446(a), the United States District Court for the Northern District of Georgia is the proper venue for removal

jurisdiction because it embraces the place where this action presently is pending, the State Court of Fulton County in the State of Georgia.

IV. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

49. PHEAA was served on April 25, 2019. Accordingly, this Notice is timely because it has been filed within the thirty day period prescribed by 28 U.S.C. § 1446(b).

50. PHEAA has not answered, moved, or otherwise responded to the Complaint.

51. The documents attached hereto as Exhibit A constitute all of the process, pleadings, and orders received by PHEAA to date.

52. Written notice of the filing of this notice of removal is being forwarded to Plaintiffs, as well as to the Clerk of Court for the State Court of Fulton County , pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing of Notice of Removal (without exhibits) is attached hereto as Exhibit C.

53. By filing this notice of removal, PHEAA does not waive any defense that may be available to it, including, but not limited to, the right to contest *in personam* jurisdiction, incomplete process, improper service of process, and/or improper venue, in this Court or in the court from which this action has been removed.

WHEREFORE, because this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1442, and because this matter may be removed under 28 U.S.C. § 1441, Defendant Pennsylvania Higher Education Assistance Agency hereby gives notice that the above-captioned action is removed to the United States District Court for the Northern District of Georgia.

DATED: May 24, 2019

Respectfully submitted,

/s/ Sarah T. Reise

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*Attorneys for Defendant, Pennsylvania
Higher Education Assistance Agency*

CERTIFICATION OF COMPLIANCE WITH L.R. 5.1B

I hereby certify that the foregoing has been computer processed with 14 point Times New Roman font in compliance with the United States District Court for the Northern District of Georgia Local Rule 5.1B.

DATED: May 24, 2019

Respectfully submitted,

/s/ Sarah T. Reise

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*Attorneys for Defendant, Pennsylvania
Higher Education Assistance Agency*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2019, a copy of the foregoing NOTICE OF REMOVAL was filed electronically, and is available for viewing and downloading through the Court's CM/ECF System. The foregoing NOTICE OF REMOVAL was also served by pre-paid certified mail to:

Christopher N. Armor
Armor Law, LLC
P.O. Box 451328
Atlanta, Georgia 31145

James W. Hurt, Jr.
Hurt Stolz, P.C.
1551 Jennings Mill Road
Suite 3100-B
Watkinsville, Georgia 30677

DATED: May 24, 2019

Respectfully submitted,

/s/ Sarah T. Reise

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*Attorney for Defendant, Pennsylvania
Higher Education Assistance Agency*

Exhibit A

GEORGIA, FULTON COUNTY

DO NOT WRITE IN THIS SPACE

STATE COURT OF FULTON COUNTY
Civil Division

CIVIL ACTION FILE #: 19EV002000

AMANDA LOVE and WINGO SMITH
P.O. BOX 451328
ATLANTA, GA 31145
Plaintiff's Name, Address, City, State, Zip Code

vs.

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY
c/o CT Corporation System, 600 North 2nd Street, #401
Harrisburg, Pennsylvania 17101
Defendant's Name, Address, City, State, Zip Code

TYPE OF SUIT	AMOUNT OF SUIT
<input type="checkbox"/> ACCOUNT	PRINCIPAL \$ _____
<input type="checkbox"/> CONTRACT	
<input type="checkbox"/> NOTE	INTEREST \$ _____
<input type="checkbox"/> TORT	
<input type="checkbox"/> PERSONAL INJURY	ATTY. FEES \$ _____
<input type="checkbox"/> FOREIGN JUDGMENT	
<input type="checkbox"/> TROVER	COURT COST \$ _____
<input type="checkbox"/> SPECIAL LIEN	*****
<input type="checkbox"/> NEW FILING	
<input type="checkbox"/> RE-FILING: PREVIOUS CASE NO.	_____

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Name: ARMOR LAW, LLC

Address: P.O. BOX 451328

City, State, Zip Code: ATLANTA, GA 31145 Phone No.: 470-990-2568

An answer to this complaint, which is herewith served on you, should be filed within thirty (30) days after service, not counting the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action. **DEFENSE MAY BE MADE & JURY TRIAL DEMANDED**, via electronic filing through E-file GA or, if desired, at the e-filing public access terminal in the Self-Help Center at 185 Central Ave., S.W., Ground Floor, Room TG300, Atlanta, GA 30303.

LeNora Ponzio, Chief Clerk (electronic signature)

If the sum claimed in the suit, or value of the property sued for, is \$300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the defendant's answer must be sworn to.

If the principal sum claimed in the suit, or value of the property sued for, is less than \$300.00, and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn answer setting up the facts relied on as a defense.

SERVICE INFORMATION:

Served, this _____ day of _____, 20_____.

DEPUTY MARSHAL, STATE COURT OF FULTON COUNTY

WRITE VERDICT HERE:

We, the jury, find for _____

This _____ day of _____, 20_____. _____ Foreperson

(STAPLE TO FRONT OF COMPLAINT)

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

AMANDA LOVE and WINGO SMITH,)
Individually and on behalf of all others)
similarly situated,)
)
Plaintiffs,)
v.)
)
PENNSYLVANIA HIGHER)
EDUCATION ASSISTANCE AGENCY)
d/b/a FEDLOANS SERVICING, INC.,)
)
Defendant.)
_____)

CIVIL ACTION FILE NO.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

1.

Plaintiffs Amanda Love and Wingo Smith, individually and on behalf of all others similarly situated in the State of Georgia, allege the following against Defendant, Pennsylvania Higher Education Assistance Agency, ("PHEAA" or "Defendant"), doing business as FedLoan Servicing Inc.: Defendant failed to properly perform their duties as servicer for the Public Service Loan Forgiveness Program, and as a result, Georgia residents with federal student loans who attempted to participate in the Public Service Loan Program have been unduly harmed.

PARTIES, JURISDICTION, AND VENUE

2.

Plaintiff Amanda Love is a resident of DeKalb County, Georgia.

3.

Plaintiff Wingo Smith is a resident of Fulton County, Georgia.

4.

PHEAA is an independent instrumentality, engaged in non-governmental commercial activity throughout the United States, including the state of Georgia.

5.

PHEAA is organized under Pennsylvania law as a miscellaneous business corporation.

6.

PHEAA's principal offices are in Pennsylvania.

7.

PHEAA is financially independent of the state of Pennsylvania, generates its own commercial revenue, and makes its own fiscal and policy decisions.

8.

PHEAA does business as FedLoan Servicing Inc.

9.

PHEAA was registered to do business with the Georgia Secretary of State between 2002 and 2016, but on December 7, 2016, then Secretary of State Brian Kemp issued a Certificate of Administrative Dissolution/Revocation of PHEAA's status in the State of Georgia. PHEAA is currently not registered to do business in the State of Georgia.

10.

PHEAA's registered agent is CT Corporation at 1201 Peachtree Street, NE, Atlanta, GA, 30361.

11.

PHEAA is subject to the jurisdiction of this Court pursuant to the Georgia Long Arm Statute, OCGA § 9-10-91, as PHEAA transacts business within the state, has

committed a tortious act or omission within this state, and/or has committed a tortious injury in this state caused by an act or omission outside this state.

12.

PHEAA regularly does and solicits business, and engages in other persistent courses of conduct, and derives substantial revenue from services rendered in this state.

13.

Venue is proper in this Court under OCGA § 9-10-93 because a substantial part of Defendant's business was transacted in Fulton County.

14.

Venue is proper in this Court under OCGA § 9-10-93 because a tortuous act, omission, or injury described herein occurred in Fulton County.

FACTUAL BACKGROUND OF FEDERAL STUDENT LOANS

15.

Federal student loans are loans that are either funded or guaranteed by the federal government pursuant to Title IV of the Higher Education Act (HEA) of 1965, as amended.

16.

In 1994, the Department began originating student loans directly to borrowers under the William D. Ford Direct Student Loan Program. These loans are called "Direct Loans" as they are originated directly through the Department of Education as opposed to federally backed loans which are originated by private banks, but federally backed by the Department of Education.

17.

In 2007, under the College Cost Reduction and Access Act (“CCRA”), 20 U.S.C. §§ 1070 *et seq.*. Congress established the Public Service Loan Forgiveness (PSLF) program.

18.

The PSLF Program was designed to address the problems of students graduating with high amounts of student loan debt not being able to take jobs in public service due to the traditionally lower salaries of public service employment versus private sector employment.

19.

The PSLF program allows federal loan borrowers employed with qualifying public interest employers to receive loan forgiveness after making qualifying payments for ten (10) years.

20.

The ability to qualify for PSLF loan forgiveness is one of the major economic benefits of public service employment, as well as one of the best recruiting tools for public service employers.

21.

Loan forgiveness under the PSLF program is only available if borrowers meet specific qualifications including: 1) the borrower’s federal student loans must be Direct Loans, or must be consolidated into the Direct Loan program; 2) borrowers must make 120 payments under a qualifying repayment plan; and 3) borrowers must be employed full time in a qualifying public service job.

22.

Qualifying repayment plans include the 10-year Standard Repayment plan or any of the income drive repayment (IDR) plans.

23.

Borrowers must make a total of 120 monthly payments under one of these repayment plans (the payments need not be consecutive).

24.

Months during which a borrower's loans are in forbearance do not qualify towards the 120 payments required for loan forgiveness.

25.

Borrowers seeking loan forgiveness under the PSLF program submit Employment Certification Forms ("ECF") to confirm their employment qualifies for the PSLF program.

26.

Borrowers are not required to submit ECF prior to applying for loan forgiveness under the PSLF program, but many borrowers choose to do so to confirm their qualifying employment and track their payment progress towards loan forgiveness.

27.

Only payments made after October 1, 2007 can be counted towards the 120 required payments for PSLF loan forgiveness, so the first possible date that a borrower could have applied for PSLF loan forgiveness was October of 2017.

28.

An entire generation of student loan borrowers have taken employment in public service jobs relying on the promise of PSLF student loan forgiveness.

29.

On September 19, 2018, the Department of Education released a public statement confirming that as of June 30, 2018, approximately 28,000 borrowers had submitted almost 33,000 applications for loan forgiveness under the PSLF program. Of the 28,000 borrowers, only 96 (ninety-six) borrowers were approved for loan forgiveness under the PSLF program.

FACTUAL BACKGROUND OF DEFENDANT'S ROLE IN FEDERAL STUDENT LOANS

30.

Loan servicers are private entities that contract with the Department of Education to handle a multitude of issues for student borrowers, including handling payments and applications from borrowers, including IDR recertification forms, employment certification forms (ECF's) for the PSLF program, and tallying qualifying payments under the PSLF program.

31.

PHEAA is a private, non-governmental, commercial student-loan financial services company operating in all fifty states.

32.

In 2009, PHEAA established "Fedloan Servicing Inc." ("Fedloan") to assist the Department of Education in servicing federal loans.

33.

PHEAA now manages more than \$100 billion in total assets, and administers the loans of nearly four million borrowers through its various programs.

34.

The Department of Education awarded PHEAA a servicing contract for federal loans in 2009 which continues to be in force to the present, subject to various modifications.

35.

The servicing contract requires PHEAA to perform a host of duties, including but not limited to the following:

- a. meet all statutory and legislative requirements;
- b. maintain procedures and systems which include a system of internal controls that ensures resource use is consistent with laws, regulations and policies;
- c. only promote services if they meet legislative and regulatory requirements;
- d. respond to written and email questions and requests timely and accurately to resolve customer complaints;
- e. meet all legislative and regulatory requirements for the Direct Loan Program; and
- f. be responsible for maintaining a full understanding of all federal and state laws and regulations and FSA requirements and ensuring that all aspects of the service continue to remain in compliance as changes occur.

36.

In 2012, the Department of Education awarded PHEAA an exclusive contract to manage the PSLF program.

37.

Student borrowers participating in the PSLF program therefore have no choice but to have their federal loans serviced by PHEAA.

PLAINTIFF AMANDA LOVE

38.

Plaintiff Amanda Love ("Plaintiff Love") is a resident of DeKalb County, Georgia.

39.

Plaintiff Love took out multiple federally backed loans to attend undergraduate and law school. These loans were consolidated into three loans under the Direct Loans program: a Direct Subsidized Consolidation Loan in August of 2008, a Direct Unsubsidized Consolidation Loan in August of 2008, and Direct Unsubsidized Consolidation Loan in October of 2010.

40.

Plaintiff Love was employed as an attorney for the Louisiana District Attorneys Association (LDAA) in Baton Rouge, Louisiana from February of 2009 to June of 2010.

41.

Plaintiff Love submitted her ECF in June of 2012 to Defendant for her employment with LDAA.

42.

Defendant sent Plaintiff Love a letter confirming that LDAA was a qualifying not-for-profit organization for the purposes of the PSLF program.

43.

Plaintiff Love relied upon this determination from Defendant in calculating her qualifying payments under the PSLF program, and also relied upon this determination in making almost all economic decisions about her career in public service.

44.

Defendant sent subsequent correspondence in the years following 2012 confirming that Plaintiff Love's employment with LDAA was qualifying employment for purposes of the PSLF program.

45.

In June of 2018, 6 years after approving Plaintiff's Love's ECF for her employment with LDAA, Defendant sent Plaintiff Love a letter stating, "Upon further review . . . , we determined that this approval was issued in error because we determined that the [LDAA] does not provide a qualifying service as its primary purpose for the purposes of the PSLF program."

46.

Plaintiff has been continuously employed with various other approved public service groups from July of 2010 until the present including East Baton Rouge Public Defender's Office, Disability Rights Texas, Federal Public Defender's Office for Southern District of Texas, DeKalb County Public Defender, and the Georgia Department of Law.

47.

Plaintiff has relied upon the promise of PSLF loan forgiveness as a major factor in her employment with public service interest groups.

48.

In December of 2015, Defendant sent Plaintiff Love correspondence stating that Plaintiff Love had been on a qualifying repayment schedule for the PSLF program from May of 2009 through December of 2015.

49.

Defendant began servicing Plaintiff Love's loans in 2012. Prior to this date, Plaintiff Love made her monthly payments on her three loans directly to the Department of Education.

50.

When Plaintiff Love made her payments directly to the Department of Education, Plaintiff Love was provided with one total monthly payment amount to satisfy all three loans.

51.

Plaintiff Love satisfied this single monthly minimum payment amount for all three loans on a regular basis prior to June of 2012 when Defendant became the servicer of Plaintiff Love's loans.

52.

Defendant has regularly provided account statements to Plaintiff of the number of qualifying payments she has submitted for PSLF program.

53.

Defendant has failed to properly credit multiple payments made by Plaintiff Love on her loans before June of 2012.

54.

On November 20, 2012, Plaintiff Love made payments for her loans which were due on January 7, 2013.

55.

Plaintiff Love did not receive credit for this early period because it was deemed “not within the billing period.”

56.

Defendant has sent Plaintiff Love multiple account statements of qualifying payments under the PSLF program which fail to properly account for the actual number of qualifying payments made by Plaintiff Love.

57.

Plaintiff Love had disputed to Defendant the calculation of the number of qualifying payments.

58.

Defendant has failed to properly audit the number of PSLF qualifying payments that have been made by Plaintiff Love.

59.

Plaintiff Love has not received the proper credit for her qualifying payments under the PSLF program.

60.

Defendant has demonstrated an inability to properly calculate qualifying payments which were made to any servicer other than Defendant.

61.

Defendant has demonstrated an inability to properly calculate qualifying payments which were made early.

62.

Plaintiff Love has relied upon the statement of the qualifying number of PSLF program provided by Defendant in making all decisions about her economic future and career.

63.

Plaintiff Love has relied upon the legislative promise of receiving proper credit for her qualifying PSLF payments.

64.

Defendant has actually and proximately damaged Plaintiff Love by failing to meet the requirements of servicing the PSLF program.

PLAINTIFF WINGO SMITH

65.

Plaintiff Wingo Smith ("Plaintiff Smith") is a resident of Fulton County, Georgia.

66.

Plaintiff Smith took out multiple federally backed loans to attend undergraduate and law school. These loans were consolidated into two loans under the Direct Loans program: a Direct Subsidized Consolidation Loan in December of 2008 and a Direct Unsubsidized Consolidation Loan in December of 2008.

67.

Plaintiff Smith has worked as an attorney for Georgia Legal Services Program from July of 2008 to May of 2015, and for Atlanta Legal Aid Society from June of 2015 to present.

68.

Plaintiff Smith's loans were serviced by Missouri Higher Education Loan Authority ("MOHELA") prior to being serviced by Defendant.

69.

Plaintiff made full, on-time qualifying payments to MOHELA which should be credited towards his total number of PSLF qualifying payments.

70.

Defendant has failed to count the qualifying payments Plaintiff Smith made to MOHELA.

71.

As of December 2018, Defendant had only given Plaintiff Smith credit for 11 qualifying PSLF payments even though he has consistently made qualifying payments for 10 years.

72.

Plaintiff Smith has relied upon the statement of the qualifying number of PSLF program provided by Defendant in making all decisions about his economic future and career.

73.

Plaintiff Smith has relied upon the legislative promise of receiving proper credit for his qualifying PSLF payments.

74.

Defendant has actually and proximately damaged Plaintiff Smith by failing to meet the requirements of servicing the PSLF program.

75.

In February of 2018, Defendant reported to the National Student Loan Data System that Plaintiff Smith had fallen behind on his payments on his loans.

76.

Plaintiff has never been delinquent on his loans and was not delinquent in February of 2018.

77.

In May of 2018, the financial aid department of the University of Illinois (Plaintiff Smith's laws school alma mater) contacted Plaintiff Smith by email informing him that the school had received notice that he was behind on his federal student loans.

78.

Plaintiff Smith was shocked and embarrassed by this email.

CLASS ALLEGATIONS

79.

This action is brought by the Plaintiffs Love and Smith individually and on behalf of others similarly situated as a class action under the provisions of OCGA § 9-11-23 for damages.

80.

The four classes of Plaintiffs for whose benefit the named Plaintiffs bring this action are defined as follows:

All Georgia residents with federal student loans serviced by

PHEAA who, at any time on or after a date seven (7) years prior to the filing of this action, had their payment history falsely presented to a third party as being delinquent, in default, or past due. This class shall be referred to as the Georgia Libel Class.

All Georgia residents with federal student loans serviced by PHEAA who, at any time prior to the filing of this action, received approval of their employment certification form (ECF) for having qualifying employment pursuant to the PSLF program, but at a subsequent date had their employment decertified by PHEAA and declared unqualifying for the PSLF program. This class shall be referred to as the Georgia ECF Class.

All Georgia residents with federal student loans serviced by PHEAA who, at any time prior to the filing of this action, made qualifying payments under the PSLF program to a servicer other than PHEAA, and subsequently failed to receive credit from PHEAA for those qualifying payments made to other servicers. This class shall be referred to as the Georgia Audit Class.

All Georgia residents with federal student loans serviced by PHEAA who, at any time prior to the filing of this action, made qualifying payments under the PSLF program but did not receive proper credit for those qualifying payments because they were made early and deemed not within the billing period. This class shall be referred to as the Georgia Prepayment Class

81.

The membership of each class is numerous and joinder of individual plaintiffs is impractical.

82.

There are questions of law and fact common to all members of the Plaintiff classes, and these common questions of law and fact predominate over any individual issues. The principal questions pertinent to the classes as a whole include:

- a. Whether Defendant has interfered with Georgia residents' ability to successfully participate in the PSLF program by failing to adequately audit**

- loan histories to properly credit qualifying payments by Georgia residents towards to the PSLF program made through servicers other than PHEAA;
- b. Whether Defendant has interfered with Georgia residents' ability to successfully participate in the PSLF program by failing to adequately audit loan histories to properly credit qualifying payments by Georgia residents towards to the PSLF program which were made early and erroneously not counted;
 - c. Whether Defendant has interfered with Georgia residents' ability to successfully participate in the PSLF program by revoking previously approved ECF's for qualifying employment;
 - d. Whether Defendant has defamed Georgia residents by false representing their payment histories to third parties;
 - e. The appropriate measure of damages and the appropriate remedies; and
 - f. Defenses raised by Defendant.

83.

The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff classes, which all arise from the same operative facts and are based on the same legal theory, and Plaintiffs' claims will thus adequately represent those of the Class Members.

84.

The named Plaintiffs will fairly and adequately protect the interest of the Class Members. Plaintiffs have retained counsel with experience in class action litigation, and they are not aware of any interest that might cause them not to vigorously pursue this case.

85.

A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder is impracticable. The expense and burden of individual litigation make it virtually impossible for the members of the classes to proceed individually, and it is therefore most efficient to resolve all claims based on Defendant's conduct against Georgia residents in one forum.

86.

The Plaintiffs are aware of no difficulties that will be encountered in the management of this litigation that would render the action unmanageable.

87.

Prosecution of separate actions by individual members of the Plaintiff classes would create adjudications that would be dispositive of the interests of the other members not parties to the adjudications.

88.

Without a class action mechanism, members of the Plaintiff classes would be substantially impaired or impeded in their ability to protect their interests. The value of claims of the individual class members would be in an amount that makes prosecution outside of the class action context uneconomical.

89.

The claims of the Plaintiffs and Plaintiff Class Members are meritorious. The named Plaintiffs believe they will prevail on the merits based upon the clear, unambiguous failure of Defendant to adequately service the loans of Georgia residents who participate in the PSLF program.

90.

A final judgment on the merits of the named Plaintiffs' claims would be fully dispositive of the claims and interests of those similarly situated who are not specifically named as a plaintiff in this action.

COUNT I – NEGLIGENCE: Failure to Adequately Count Qualifying Payments Made to Other Servicers

91.

Plaintiff Love and Plaintiff Smith re-allege all preceding paragraphs of this Complaint as if fully restated herein and further state the following on behalf of themselves and the **Georgia Audit Class**:

92.

Defendant has committed acts of omission contrary to their legal duties as servicer for the Department of Education.

93.

The Department of Education awarded Defendant a servicing contract for federal loans in 2009 which continues to be in force to the present, subject to various modifications.

94.

The servicing contract requires Defendant to perform a host of duties, including but not limited to the following:

- a. meet all statutory and legislative requirements;
- b. maintain procedures and systems which include a system of internal controls that ensures resource use is consistent with laws, regulations and policies;
- c. only promote services if they meet legislative and regulatory requirements;

- d. respond to written and email questions and requests timely and accurately to resolve customer complaints;
- e. meet all legislative and regulatory requirements for the Direct Loan Program;
- f. be responsible for maintaining a full understanding of all federal and state laws and regulations and FSA requirements and ensuring that all aspects of the service continue to remain in compliance as changes occur.

95.

Defendant owed a duty to Plaintiff Love, Plaintiff Smith and the Georgia Audit Class to use reasonable care in calculating the number of qualifying payments borrowers had made under the PSLF program.

96.

Defendant has a common law duty to prevent the foreseeable risk of harm to others, including Plaintiffs and the Class.

97.

Plaintiffs and members of the Georgia Audit Class all have student loans held by the Department of Education. The Department of Education has contracted with Defendant to utilize "efficient and effective commercial contract services to manage all types of Title IV student aid obligations, including, but not limited to, servicing and consolidation of outstanding debt."

98.

When Defendant received a contract to be the sole provider of servicing for the PSLF program beginning in 2012, Defendant knew its duties would include making accurate accountings of qualifying payments from borrowers, including those payments made by borrowers to other servicers of Direct Loans.

99.

Plaintiffs and members of the Georgia Audit Class made qualifying payments to other servicers between the time that the first PSLF payments were eligible on October 1, 2007 through the present, yet Defendant failed to properly maintain procedures and staff necessary to adequately account for these qualifying payments made to other servicers.

100.

It was foreseeable that if reasonable measures were not taken, Defendant's failure to perform these duties would deny borrowers the opportunity to participate in the PSLF program as legislated.

101.

Defendant assumed a duty to use reasonable measures in servicing loans for PSLF program.

102.

Only Defendant was in a position to ensure that its servicing systems were sufficient to protect against the harm to Plaintiff and the class members from Defendant's insufficient servicing measures.

103.

Defendant's duty to use reasonable care in servicing the PSLF program arose not only as a result of the common law and the statutes, but also because it was bound by, and had committed to comply with, industry standards, as represented by the Department of Education to borrowers, as well as in the Department's contract for services with Defendant.

104.

Defendant breached its common law, statutory, and other duties and thus was negligent by failing to use reasonable measures to service Plaintiffs' and the class members' loans correctly and on time.

105.

In connection with the conduct described above, Defendant acted wantonly, recklessly, and with complete disregard for the consequences.

106.

As a direct and proximate result of Defendant's negligent conduct, Plaintiffs and the Class have suffered damages.

COUNT II – NEGLIGENCE: Failure to Adequately Count Qualifying Early Payments

107.

Plaintiff Love and Plaintiff Smith re-allege all preceding paragraphs of this Complaint as if fully restated herein and further state the following on behalf of themselves and the **Georgia Prepayment Class**:

108.

Defendant has committed acts of omission contrary to their legal duties as servicer for the Department of Education.

109.

The Department of Education awarded Defendant a servicing contract for federal loans in 2009 which continues to be in force to the present, subject to various modifications.

110.

Defendant owed a duty to Plaintiff Love, Plaintiff Smith and the Georgia Prepayment Class to use reasonable care in calculating the number of qualifying payments borrowers had made under the PSLF program.

111.

Defendant has a common law duty to prevent the foreseeable risk of harm to others, including Plaintiffs and the Class.

112.

Plaintiffs and members of the Georgia Prepayment Class all have student loans held by the Department of Education.

113.

When Defendant received a contract to be the sole provider of servicing for the PSLF program beginning in 2012, Defendant knew its duties would include making accurate accountings of qualifying payments from borrowers, including those payments made early by borrowers.

114.

Plaintiffs and members of the Georgia Prepayment Class made early qualifying payments towards the PSLF program, yet Defendant failed to properly maintain procedures to count these payments.

115.

Defendant stated these payments did not qualify because they were "not received within the billing period."

116.

It was foreseeable that if reasonable measures were not taken, Defendant's failure to perform these duties would deny borrowers the opportunity to participate in the PSLF program as legislated.

117.

Defendant assumed a duty to use reasonable measures in servicing loans for PSLF program.

118.

Only Defendant was in a position to ensure that its servicing systems were sufficient to protect against the harm to Plaintiff and the class members from Defendant's insufficient servicing measures.

119.

Defendant's duty to use reasonable care in servicing the PSLF program arose not only as a result of the common law and the statutes, but also because it was bound by, and had committed to comply with, industry standards, as represented by the Department of Education to borrowers, as well as in the Department's contract for services with Defendant.

120.

Defendant breached its common law, statutory, and other duties and thus was negligent by failing to use reasonable measures to service Plaintiffs' and the class members' loans correctly and on time.

121.

In connection with the conduct described above, Defendant acted wantonly, recklessly, and with complete disregard for the consequences.

122.

As a direct and proximate result of Defendant's negligent conduct, Plaintiffs and the Class have suffered damages.

COUNT III – NEGLIGENCE: Failure to Adequately Process Employment Certification Forms

123.

Plaintiff Love re-allege all preceding paragraphs of this Complaint as if fully restated herein and further state the following on behalf of themselves and the **Georgia ECF Class**:

124.

Defendant has committed acts of omission contrary to their legal duties as servicer for the Department of Education.

125.

The Department of Education awarded Defendant a servicing contract for federal loans in 2009 which continues to be in force to the present, subject to various modifications.

126.

Defendant owed a duty to Plaintiff Love and the Georgia ECF Class to use reasonable care in processing ECF's for Georgia residents attempting to participate in the PSLF program.

127.

Defendant has a common law duty to prevent the foreseeable risk of harm to others, including Plaintiffs and the Class.

128.

Plaintiffs and members of the Georgia ECF Class all have student loans held by the Department of Education.

129.

When Defendant received a contract to be the sole provider of servicing for the PSLF program beginning in 2012, Defendant knew its duties would include making determinations of whether applicants for the PSLF had participated in qualifying employment.

130.

It was foreseeable that if reasonable measures were not taken, Defendant's failure to perform these duties would deny borrowers the opportunity to participate in the PSLF program as legislated.

131.

Defendant assumed a duty to use reasonable measures in servicing loans for PSLF program.

132.

Only Defendant was in a position to ensure that its servicing systems were sufficient to protect against the harm to Plaintiff and the class members from Defendant's insufficient servicing measures.

133.

Plaintiffs and members of the Georgia ECF Class submitted ECF's which were approved and relied upon, but subsequently revoked.

134.

Defendant's duty to use reasonable care in servicing the PSLF program arose not only as a result of the common law and the statutes, but also because it was bound by, and had committed to comply with, industry standards, as represented by the Department of Education to borrowers, as well as in the Department's contract for services with Defendant.

135.

Defendant breached its common law, statutory, and other duties and thus was negligent by failing to use reasonable measures to service Plaintiffs' and the class members' loans correctly and on time.

136.

In connection with the conduct described above, Defendant acted wantonly, recklessly, and with complete disregard for the consequences.

137.

As a direct and proximate result of Defendant's negligent conduct, Plaintiffs and the Class have suffered damages.

COUNT IV - BREACH OF CONTRACT: Failure to Adequately Count Qualifying Payments Made to Other Servicers

138.

Plaintiffs re-allege all preceding paragraphs of this Complaint as if fully restated herein and further state the following:

139.

Plaintiff Love and Plaintiff Smith brings this Count on behalf of members of the **Georgia Audit Class**.

140.

At all relevant times, Defendant was party to a valid and enforceable servicing contract with the Department of Education, of which Plaintiff and members of the **Georgia Audit Class** were intended third party beneficiaries.

141.

The servicing contract between Defendant and the Department of Education required compliance with applicable federal law.

142.

Federal law requires all qualifying payments made under the PSLF program to be properly credited towards completion of the PSLF program.

143.

Because the servicing contract required compliance with applicable federal law, the aforementioned practices constitute a breach of the servicing contract.

144.

Alternatively, even if it is determined that the aforementioned practices did not constitute a breach of the express terms of the servicing contract, these practices nonetheless constituted a breach of the covenant of good faith and fair dealing implied in all contracts. OCGA § 11-1-203; West v. Koufman, 259 Ga. 505, 506 (1989).

145.

As a result of Defendant's breach of the servicing contract, Plaintiff Love, Plaintiff Smith, and members of the Georgia Audit Class have suffered the same substantial damages, including, but not limited to loss of credit towards completion of the PSLF program.

COUNT V - BREACH OF CONTRACT: Failure to Adequately Count Early Payments

146.

Plaintiffs re-allege all preceding paragraphs of this Complaint as if fully restated herein and further state the following:

147.

Plaintiff Love and Plaintiff Smith brings this Count on behalf of members of the **Georgia Prepayment Class**.

148.

At all relevant times, Defendant was party to a valid and enforceable servicing contract with the Department of Education, of which Plaintiff and members of the Georgia Prepayment Class were intended third party beneficiaries.

149.

The servicing contract between Defendant and the Department of Education required compliance with applicable federal law.

150.

Federal law requires all qualifying payments made under the PSLF program to be properly credited towards completion of the PSLF program.

151.

Because the servicing contract required compliance with applicable federal law, the aforementioned practices constitute a breach of the servicing contract.

152.

Alternatively, even if it is determined that the aforementioned practices did not constitute a breach of the express terms of the servicing contract, these practices

nonetheless constituted a breach of the covenant of good faith and fair dealing implied in all contracts. OCGA § 11-1-203; West v. Koufman, 259 Ga. 505, 506 (1989).

153.

As a result of Defendant's breach of the servicing contract, Plaintiff Love, Plaintiff Smith, and members of the Georgia Prepayment Class have suffered the same substantial damages, including, but not limited to loss of credit towards completion of the PSLF program.

**COUNT VI - BREACH OF CONTRACT: Failure to Adequately Process
Employment Certification Forms**

154.

Plaintiffs re-allege all preceding paragraphs of this Complaint as if fully restated herein and further state the following:

155.

Plaintiff Love brings this Count on behalf of members of the **Georgia ECF Class**.

156.

At all relevant times, Defendant was party to a valid and enforceable servicing contract with the Department of Education, of which Plaintiff and members of the Georgia ECF Class were intended third party beneficiaries.

157.

The servicing contract between Defendant and the Department of Education required compliance with applicable federal law.

158.

Federal law requires Defendant to approve ECF's for borrowers whose employment meets the guidelines in 34 C.F.R. § 685.219.

159.

Under 34 C.F.R. § 685.219, if the Department determines that the borrower meets the eligibility requirements for loan forgiveness, the borrower is notified of this determination; If the Secretary determines that the borrower does not meet the eligibility requirements for employment, the Department of Education notifies the borrower that the application has been denied, and provides the basis for the denial.

160.

Defendant approved ECF's for Plaintiff Love and members of the ECF class and allowed Plaintiff and class members to rely upon those determinations for years, and then Defendant subsequently revoked the approval of the ECF's.

161.

Because the servicing contract required compliance with applicable federal law, the aforementioned practices constitute a breach of the servicing contract.

162.

Alternatively, even if it is determined that the aforementioned practices did not constitute a breach of the express terms of the servicing contract, these practices nonetheless constituted a breach of the covenant of good faith and fair dealing implied in all contracts. OCGA § 11-1-203; West v. Koufman, 259 Ga. 505, 506 (1989).

163.

As a result of Defendant's breach of the servicing contract, Plaintiff Love and members of the Georgia ECF Class have suffered the same substantial damages, including, but not limited to loss of credit towards completion of the PSLF program and detrimental reliance upon the ECF approval letters.

COUNT VII - LIBEL (OCGA §§ 51-5-1 et seq.)

164.

Plaintiff Smith re-alleges all preceding paragraphs of this Complaint as if fully restated herein and further state the following on behalf of himself and the **Georgia Libel Class**:

165.

Defendant made false and malicious defamatory statements about Plaintiff Smith and other members of the Georgia Libel Class by making written statements to the Department of Education and subsequent financial aid departments which falsely portrayed their loan status as being delinquent, behind in payment, or in default.

166.

Defendant caused this false information to be communicated to parties other than the borrowers.

167.

Defendant's publication of false statements about the payment histories of borrowers' loans exposed these borrowers to public hatred, contempt, or ridicule.

168.

Plaintiff Smith and members of the Georgia Libel Class suffered damages as a result of Defendant's libel.

COUNT VIII – PROMISSORY ESTOPPEL (OCGA § 13-3-44)

169.

Plaintiff Love re-alleges all preceding paragraphs of this Complaint as if fully restated herein and further state the following on behalf of herself and the **Georgia ECF Class**:

170.

Defendant approved ECF's for Plaintiff Love and members of the Georgia ECF Class, informing them of their employment qualifying for participation in the PSLF program.

171.

Defendant subsequently sent notices to Plaintiff Love and members of the Georgia ECF Class stating that their ECF's were approved in error and that their employment did not qualify for the PSLF program.

172.

Defendant should have reasonably expected their approvals of these ECF's would be relied upon by Plaintiff Love and members of the Georgia ECF Class.

173.

Plaintiff Love and members of the Georgia ECF Class relied upon these approvals of the ECF's in making decisions about their employment and economic futures.

174.

As a direct and proximate result of Defendant's conduct, Plaintiff Love and the Class have suffered damages.

WHEREFORE, Plaintiffs being entitled to a trial by jury and judgment against the Defendant, pray for the following:

- a) An order certifying that the action may be maintained as a class action;
- b) The Plaintiffs Love and Plaintiff Smith be designated as class representatives;
- c) That Plaintiffs' counsel of record herein be designated as class counsel for the Plaintiff Class Members as defined in this Complaint or by this Court;
- d) That Defendant be held liable for the actions described herein;

- e) That Plaintiffs and the members of the proposed classes receive compensatory damages in an amount to be proven at trial;
- f) That an order issue granting Plaintiffs their expenses incurred in bringing and prosecuting this action, including attorney fees, expert fees and costs;
- g) That the Defendant be required to pay all monies referred to herein which relate to the Plaintiff Class Members into a common fund for the benefit of the Plaintiff Class Members, less an incentive award, litigation expenses, and attorneys' fees;
- h) That the Court conduct a "fairness hearing," after due and proper notice to all Plaintiff Class Members, and make such award of attorneys' fees, litigation expenses and an incentive award for the named Plaintiffs as the Court deems appropriate from the common fund (as reference above) and/or from the Defendant;
- i) That Plaintiffs have a trial by jury; and
- j) Such other and further relief as the Court may deem just, necessary or appropriate.

This 12th Day of April, 2019.

ARMOR LAW, LLC

/s/ Chris Armor
Christopher N. Armor
Georgia Bar No. 614061

P.O. Box 451328
Atlanta, Georgia 31145
Phone:(470) 990-2568
chris.armor@armorlaw.com

HURT STOLZ, P.C.

/s/ James W. Hurt, Jr.
By: James W. Hurt, Jr.
Georgia Bar No.: 380104

1551 Jennings Mill Road
Suite 3100-B

Watkinsville, Georgia 30677
(706) 395-2750
Facsimile: (866) 766-9245
jhurt@hurtstolz.com

**ATTORNEYS FOR PLAINTIFFS AND
THE PUTATIVE CLASSES**

Exhibit B

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS				1. REQUISITION NUMBER EDOFSA-09-000621	PAGE 1 OF 72	
2. CONTRACT NO. ED-FSA-09-D-0014		3. AWARD/EFFECTIVE DATE JUN 17, 2009	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL: a. NAME Nicholas Chung nicholas.chung@ed.gov			b. TELEPHONE NUMBER (No collect calls) 202-377-3635		8. OFFER DUE DATE/ LOCAL TIME	
9. ISSUED BY CODE FSA-FS2 United States Department of Education Federal Student Aid/Mission Support Group 830 First St NE - Suite 91F3 Washington DC 20202			10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS NAICS: <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) SIZE STANDARD:			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS 0 Days 0% Net 30		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION: <input type="checkbox"/> RFP <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP		
15. DELIVER TO CODE			16. ADMINISTERED BY CODE FSA-FS2 United States Department of Education Federal Student Aid/Mission Support Group 830 First St NE - Suite 91F3			
17a. CONTRACTOR/OFFEROR CODE 00030774 FACILITY CODE HIGHER EDUCATION ASSISTANCE AGENCY, 21693362 1200 NORTH 7TH STREET CAGE: 41UK7 FINANCIAL MANAGEMENT 5TH FLOOR BUNS: 007368103 HARRISBURG PA 171021444 TELEPHONE NO.			18a. PAYMENT WILL BE MADE BY CODE			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			<input type="checkbox"/> 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
Please	see continuation page for line item details.					
<i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>						
25. ACCOUNTING AND APPROPRIATION DATA See Schedule				26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$5,000,000.00		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDOA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED				<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDOA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR 			31a. UNITED STATES OF AMERICA SIGNATURE OF CONTRACTING OFFICER 			
30b. NAME AND TITLE OF SIGNER (Type or print) 		30c. DATE SIGNED 06/17/09	31b. NAME OF CONTRACTING OFFICER (Type or print) Mike Whister		31c. DATE SIGNED 6/17/09	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--	-----------	---

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				

38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
---------------------	------------------------	-------------

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT (<i>Location</i>)
	42c. DATE REC'D (<i>YY/MM/DD</i>)
	42d. TOTAL CONTAINERS

SCHEDULE Continued

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE \$	AMOUNT \$
	Accounting and Appropriation Data: 0198M2009.A.2009.ENB00000.6P2.2572A.C26.000.0000000000000 Cost Applied: \$5,000,000.00	000000			
0001	IDIQ Base Ordering Period Award Minimum Guarantee Period of Performance: 06/17/2009 - 06/16/2014	1.00	SE	5,000,000.00	5,000,000.00
0002	OPTION - Optional Ordering Period Optional Period of Performance: 06/17/2014 - 06/16/2019	1.00	EA	0.00	0.00

A. ADDENDUM 1 – SF 1449 CONTINUATION PAGE

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**B. ADDENDUM 2 – 52.212-4, CONTRACT TERMS AND CONDITIONS—
COMMERCIAL ITEMS (MAR 2009)**

**B.1 52.212-4 Contract Terms And Conditions—Commercial Items (Mar 2009)—
TAILORED**

- (c)(1) *Changes.* The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
- (i) Description of services to be performed.
 - (ii) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (iii) Place of performance of the services.
- (2) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (3) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (4) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (5) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

B.2 52.252-2 Clauses Incorporated By Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The full text of a clause may also be accessed electronically at:

<http://www.arnet.gov/far/>

- 52.203-13 Contractor Code of Business Ethics and Conduct (Dec 2008)
- 52.203-14 Display of Hotline Poster(s) (Dec 2007)
- 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEP 2006)
- 52.216-18 Ordering (OCT 1995)
 - (a) the effective date of award, the end of the current period of performance
- 52.216-19 Ordering Limitations (OCT 1995)
 - (a) One Borrower
 - (b)(1) Five Million Borrowers
 - (b)(2) Five Million Borrowers
 - (b)(3) Two Days
 - (d) One Day
- 52.216-22 Indefinite Quantity (OCT 1995)

- (d) the end of the current period of performance
- 52.216-27 Single Or Multiple Awards (OCT 1995)
 - 52.217-8 Option To Extend Services (NOV 1999)
 - 52.217-9 Option to Extend the Term of the Contract (MAR 2000)
 - 52.224-1 Privacy Act Notification (APR 1984)
 - 52.224-2 Privacy Act (APR 1984)

B.3 EDAR 3452.202-1 Definitions (Aug 1987) – TAILORED

- (a) The term "Secretary" or "Head of the Agency" (also called "Agency Head") means the Secretary of the Department of Education; and the term "his/her duly authorized representative" means any person, persons, or board authorized to act for these officials.
- (b) "Chief Acquisition Officer" or "CAO" means the official responsible for monitoring the agency's acquisition activities, evaluating them based on applicable performance measurements, increasing the use of full and open competition in agency acquisitions, making acquisition decisions consistent with applicable laws, and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making and developing and maintaining a acquisition career management program.
- (c) "Chief of the Contracting Office" means an official serving in the contracting activity (CAM or FSA Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. See also definition of "Head of Contracting Activity" below.
- (d) "Contracting Officer's Representative" or "COR" means a government employee appointed in writing ONLY by a contracting officer and delegated limited responsibilities to perform specified contract management duties related to technical oversight and administration of a specific contract. CORs may serve in a full-time or part-time capacity. The COR performs the contract management duties assigned by the CO in a written "Contracting Officer's Representative Designation Memorandum" for each particular contract. Multiple CORs may be appointed for a single contract when the area of expertise necessary requires such appointments. The CO may appoint alternate or assistant CORs to serve in the COR's absence. For the purpose of this program, the term Contracting Officer's Technical Representative (COTR) will be used for assistant CORs.
- (e) "Head of the Contracting Activity" or "HCA" means those officials within the Department of Education who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Director, Federal Student Aid Acquisitions, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM) is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.
- (f) "Performance-Based Organization" or "PBO" is the office within the Department that is mandated by Public Law 105-244 to carry out Federal student assistance or aid programs and report to Congress on an annual basis. It may also be referred to as "Federal Student Aid."
- (g) "Senior Procurement Executive" or "SPE" means the single agency official appointed as such by the head of the agency and delegated broad responsibility for acquisition functions, including issuing agency acquisition policy and reporting on acquisitions agency-wide. The SPE also acts as the official one level above the contracting officer when the HCA is acting as a contracting officer.
- (h) "Department" or "ED" means the United States Department of Education.

B.4 ED 307-17 Conflicts Of Interest (Aug 2007)

(a) The contractor, subcontractor, employee or consultant, has certified that, to the best of their knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational or personal conflict of interest, (see FAR Subpart 9.5 for organizational conflicts of interest), (or apparent conflict of interest) for the organization or any of its staff, and that the contractor, subcontractor, employee or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee or consultant). Conflicts may arise in the following situations:

- (1) Unequal access to information – a potential contractor, subcontractor, employee or consultant has access to non-public information through its performance on a government contract.
- (2) Biased ground rules – a potential contractor, subcontractor, employee or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract,
- (3) Impaired objectivity – a potential contractor, subcontractor, employee or consultant, or member of their immediate family (spouse, parent or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility.

"Impaired objectivity" includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

- (i) financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;
- (ii) significant connections to teaching methodologies that might require or encourage the use of specific products, property or services; or
- (iii) significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property or services,

Offerors must provide the disclosure described above on any actual or potential conflict (or apparent conflict of interest) of interest regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict (or apparent conflict of interest), including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest.

- (b) The contractor, subcontractor, employee or consultant agrees that if “impaired objectivity, or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions that the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).
- (c) Remedies - The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the Contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict (or apparent conflict of interest) after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of Title 18, U.S. Code, § 1001 and fines of up to \$5000 for violation of Title 31, U.S. Code, § 3802. Further remedies include suspension or debarment from contracting with the federal government. The Contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.
- (d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the Contracting Officer.
- (e) The Contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions which shall conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

B.5 EDAR 3452.208-70 Printing (Aug 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8 1/2 by 11 inches, and one side and color only.

B.6 FSA 24-1 Release Of Information Under The Freedom Of Information Act (Jan 2008)—TAILORED

By entering into a contract with the Department of Education and as permitted/authorized by existing statutes and applicable case law, without regard to proprietary markings, the contractor approves the release of the entire contract and all related modifications and task orders, including, but not limited to:

- (1) Unit prices, including labor rates,
- (2) Statements of Work/Performance Work Statement generated by the contractor,
- (3) Performance requirements, including incentives, performance standards, quality levels and service level agreements,

- (4) Reports, deliverables and work products delivered in performance of the contract (including quality of service, performance against requirements/standards/service level agreements),
- (5) Any and all information, data, software and related documentation first provided under the contract,
- (6) Proposals or portions of proposals incorporated by reference, and
- (7) Other terms and conditions.

B.7 FSA 27-1 Labeling Of Documents (June 2007)—TAILORED

The Contractor shall not label any data, as defined in the clause at 52.227-14, produced in performance of this contract in a way that would restrict the Government's right to use or release the information. If applicable, the Contractor shall include a legend that identifies sensitive data that should not be released for security reasons. Under FAR 52.227-14, Rights in Data-General (or 52.227-15, -16, -17) clause, this data may be used for any public purpose. Deliverables shall not contain vendor-specific logos, mottos, watermarks, or holograms.

The Contractor shall not use, particularly for proposals, U.S. Government logos, such as the U.S. Department of Education or Federal Student Aid.

B.8 FSA 27-2 Limitations On The Use Or Disclosure Of Government-Furnished Information Marked With Restrictive Legends (Dec 2006)

- (a) For contracts under which data are to be produced, furnished, or acquired, the terms “limited rights” and “restricted rights” are defined in the Rights in Data - General clause of this contract.
- (b) Proprietary data, technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.
 - (1) *Proprietary data with legends that serve to restrict disclosure or use of data.* The Contractor shall use, modify, reproduce, perform, or display proprietary data received from the Government with proprietary or restrictive legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party who owns the data, release or disclose such data or software to any person.
 - (2) *GFI marked with limited or restricted rights legends.* The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.
 - (3) *GFI marked with specially negotiated license rights legends.* The Contractor shall use, modify, reproduce, release, perform, or display proprietary data, technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the use and non-disclosure agreement. The Contractor shall modify paragraph (1)(c) of the use and non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release,

performance, display, and disclosure of the data or software.

- (c) Indemnification and creation of third party beneficiary rights.
 - (1) The Contractor agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of proprietary data, technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software.
 - (2) The Contractor agrees that the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of proprietary data, technical data or computer software subject to restrictive legends.

B.9 FSA 27-3 Use And Non-Disclosure Agreement

- (a) Except as provided in paragraph (b) of this clause, proprietary data, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this clause prior to release or disclosure of the data.
 - (1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data subject to limited rights, or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.
 - (2) For an intended release, disclosure, or authorized use of proprietary data, technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and non-disclosure agreement to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display or disclosure of the data or software.
- (b) The requirement for use and non-disclosure agreements does not apply to Government contractors which require access to a third party's data or software for the performance of a Government contract that contains the clause, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.
- (c) The prescribed use and non-disclosure agreement is:

USE AND NON-DISCLOSURE AGREEMENT

The undersigned, ___(Insert Name) ___, an authorized representative of the ___(Insert Company Name) ___, (which is hereinafter referred to as the “Recipient”) requests the Government to provide the Recipient with proprietary data, technical data or computer software (hereinafter referred to as “Data”) in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

- (1)The Recipient shall —

- (a) Use, modify, reproduce, release, perform, display, or disclose Data marked with SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the “Contractor”), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.
 - (b) Use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor.
 - (c) Use computer software marked with restricted rights legends only in performance of Contract Number ___(insert contract number(s)) ___. The Recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend.
 - (d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See (a)(2) of the Use and Non-Disclosure Agreement clause. Omit if none of the Data requested is marked with special license rights legends).
- (2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.
 - (3) The Recipient agrees to accept these Data “as is” without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.
 - (4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.
 - (5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.
 - (6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or

any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

- (7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.
- (8) This Agreement shall be effective for the period commencing with the Recipient's execution of this Agreement and ending upon ___(Insert Date) ___. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient's Business Name

Authorized Representative

Date

Representative's Typed Name and Title

B.10 FSA 31-1 Proposal Cost And/Or Pricing Data (August 2008)

Federal Student Aid intends to collect cost, pricing and technical information submitted in response to proposals. Information will be evaluated and stored in Federal Student Aid's Cost Library in order to expand the organizations historical pricing data and cost estimating capabilities.

B.11 FSA 32-1 Invoice Procedures (August 2007)

The Contractor must submit a physical invoice via either mail, fax or e-mail for this contract in order to be paid for products and/or services rendered.

Federal Student Aid's "designated billing office" is:

US Department of Education
Union Center Plaza
Federal Student Aid Administration
830 First Street, NE, Suite 54B1
Washington, D.C. 20202-0001

E-mail: InvoiceAdmin@ed.gov
Fax: 202-275-3477

The Contractor shall also simultaneously submit copies of the invoice to the Contracting Officer and one to the Contracting Officer's Representative (COR). The CO and COR should receive copies via the same means as the invoice sent to the Budget Group.

When submitting an invoice via mail, the Contractor shall submit the original invoice AND two copies of the invoice.

At a minimum the following items must be addressed in order for the invoice to be considered "proper" for payment:

- (1) Name and Address of the Contractor.
- (2) Invoice Number and Invoice Date (Date invoices as close as possible to the date of mailing or transmission. The date and actual submission must occur after receipt, inspection and acceptance of the supplies or services.)
- (3) The Contract number, contract line item, and if applicable, the order number must be included on the invoice and be correct.
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered must agree with the contract or order.
- (5) Terms of any prompt payment discount offered.
- (6) Name, title, and phone number of persons to be notified in event of defective invoice.
- (7) The period of time covered by the invoice must include the first and last day of the period.
- (8) Totals must be supported by subtotals and subtotals should be supported by detail, (i.e. documentation for categories of labor, hours performed, unit prices) and deliverables provided.
- (9) If required by this contract or order, receipts must be provided to support documentation of "other direct costs" (ODCs) or materials.

B.12 AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (Pub.L. 111-5)

In the event funds are utilized on this contract originating from the American Recovery and Reinvestment Act of 2009, or other discrete legislation, the following clauses, or similar clauses, shall apply:

- 52.203-15 Whistleblower Protections Under The American Recovery And Reinvestment Act Of 2009 (Mar 2009)
- 52.204-11 American Recovery And Reinvestment Act—Reporting Requirements (Mar 2009)
- 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Mar 2009)—Alternate II (Mar 2009)
- 52.215-2 Audit And Records—Negotiation—Alternate I (Mar 2009)
- EDAR 3403-1 Self Reporting Of Violations – Recovery Act (Feb 2009)

The contractor and subcontractor shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee or subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

B.13 ADDITIONAL TERMS AND CONDITIONS

- A. **Contract Type**—Indefinite Delivery/Indefinite Quantity (IDIQ). During the course of the basic ordering period, the Government will provide a minimum of \$5,000,000.00 in revenue, provided that the contractor is in compliance with the requirements for servicing federally held debt, and the maximum volume for the basic ordering period agreement will be 50 million borrowers. The Optional Ordering Period will have a minimum of \$0 and a maximum of an additional 50 million borrowers
- B. **Ordering Period**—The ordering period for this contract will be one (1), five (5) year Base Ordering Period, with one (1) additional five (5) year Optional Ordering Period.

- C. **Requirements Deadlines**—The contractor shall comply with the following compliance requirements deadlines:
- (1) The contractor shall meet the Initial Requirements by August 31, 2009 for servicing federally held debt. If these are met, FFEL servicing may begin.
 - (2) The contractor shall meet the Intermediate Requirements by March 31, 2010 (unless otherwise noted within the Intermediate Requirements document), for servicing federally held debt. If all requirements are not met, the Government may elect to not assign further volume to the contractor. Furthermore, the Government may transfer currently held accounts to another servicer. The contractor losing the accounts shall bear the costs of any such transfer.
 - (3) The contractor shall meet the Full Requirements by August 31, 2010 for Direct Loan servicing. If the Government determines the requirements are not met, the Government may elect to not assign further volume to the contractor. Furthermore, the Government may transfer currently held accounts to another servicer. The contractor losing the accounts shall bear the costs for any such transfer.
- D. **Quarterly Compliance Monitoring**—[Reserved]
- E. **Annual Compliance Audit**—[Reserved]
- F. **Allocation Methodology**—See Attachments A-4 and A-5.
- G. **Allocation Metrics**— See Attachments A-4 and A-5.
- H. **Performance Incentives/Metrics**—[Reserved]
- I. **Price Definitions**—See Attachment A-6.
- J. **Work Performed Outside the Continental United States**—The Contractor has represented to the Department that it will perform all work required under this Contract within the United States. If, at any time, the Contractor wishes to perform any Contract work outside the United States, the Contractor shall inform the Contracting Officer, in advance and in writing, of its intention and request the Department's approval. The Contractor shall not perform any Contract work outside the United States unless and until it has received the Contracting Officer's explicit, written approval to perform such work. In order to give proper consideration to the Contractor's request, the Department may ask for, and the Contractor shall provide, information relevant to the proposed performance outside the United States, including but not limited to a detailed description of the physical, personnel and management resources to be used and any potential difficulties or constraints in performing in the foreign jurisdiction. The Department may refuse to approve Contract performance outside the United States to the extent that, solely in the Department's judgment, the Contractor has not shown that performance outside the United States would satisfy the Contract requirements and would not impair or degrade performance. Further, the Department may refuse to approve any performance outside the United States for any other reason, or for no reason, except as otherwise required by the laws and treaties of the United States. The Department also may approve performance outside the United States subject to certain conditions, to which conditions the Contractor shall strictly adhere. Neither performance within the United States, nor the Department's refusal to allow performance outside the United States shall ever constitute a change to this Contract or give rise to any entitlement to additional compensation or excuse any failure of performance by the Contractor. Nothing in this clause shall be interpreted to impose any obligation on the Department to allow or to refuse a request for performance of this Contract outside the United States.

K. Branding/Marketing Material—Contractors may not solicit or promote other services/products they, or their affiliates, offer while servicing Department of Education borrowers, or Federally held debt. This includes all communication channels and touch points, such as but not limited to: inbound and outbound calls/email, web pages, any mailings specific to the status of their account, direct personal and automated interaction, etc.

Scenarios: (1) if the servicer services Federally and non-Federally held debt and offers combined billing, no marketing envelopes or inserts for other services/products may be issued; (2) if the servicer services Federally and non-Federally held debt and does NOT use combined billing, normal marketing may be provided for non- Federally held debt for other services/products; and (3) if the servicer services Federally and non-Federally held debt and is in personal contact, no marketing for other services/products may be discussed. If a borrower with in-school status seeks information regarding other products or services from the servicer, the borrower shall be directed to their school's Student Financial Assistance Office.

Any exception or ambiguity regarding the above shall be reviewed and approved by the Contracting Officer in advance.

L. Invoicing and Non-Compliance – Borrowers whose loans are not being serviced in compliance with the Requirements, Policy and Procedures for servicing federally held debt due to the fault of the servicer (i.e. correct interest calculations, correct balances, interest determination and calculations, notices sent properly, proper due diligence, etc.), will not be billable to the Government from the initial point of non-compliance. Any funds that have been invoiced for these borrowers and paid shall be returned to the Government via a credit on the next invoice.

M. Contracting Officer's Representative – The following individual is designated as Contracting Officer's Representative (COR) for this contract:

Mr. James McMahan
Federal Student Aid
830 First Street, NE
Suite 111G5
Washington, DC 20202
Email: james.mcmahan@ed.gov
Phone: (202) 377-3124

N. Additional Terms:

1. The Title IV Servicing contracts are for any potential services to manage all types of Title IV student aid obligations, including, but not limited to, servicing and consolidation of outstanding debt. However, they are not Requirements contracts.
2. Each contractor will provide, at a minimum, the services provided within their proposal, in accordance with the pricing identified in Term #3 below.
3. The Government will set and manage the common pricing, including tier structure, below:

Status	Volume Low	Volume High	Unit Price
Borrowers in In-school Status	N/A	N/A	\$ 1.050
Borrowers in Grace or Current Repayment Status	1	3,000,000	\$ 2.110
	3,000,001	UP	\$ 1.900
Borrowers in Deferment or Forbearance	1	1,600,000	\$ 2.070
	1,600,001	UP	\$ 1.730
Borrowers 31-90 Days Delinquent	N/A	N/A	\$ 1.620
Borrowers 91-150 Days Delinquent	N/A	N/A	\$ 1.500
Borrowers 151-270 Days Delinquent	N/A	N/A	\$ 1.370
Borrowers 270+ Days Delinquent	N/A	N/A	\$ 0.500

Out year pricing will follow the methodology described utilizing the subsequent terms. There will be no set declination in pricing at the time of award.

4. The Government has included an escalation methodology based upon the Bureau of Labor Statistics' (BLS) Employment Cost Index (ECI) for Total Compensation, Private Industry, Service Occupations (Not Seasonally Adjusted), to account for significant inflation and/or deflation. When the ECI exceeds 3.0% (plus or minus) in any given year the Government will adjust the established common pricing by any amount in excess of this rate. The calculated rate of escalation will equal the average of the 12-month percent change for the previous four quarters, ending June 30th. This ECI escalation will be applied beginning in September of the same calendar year. Further, this escalation will compound for all remaining years of the Base and Optional Ordering Periods.

For example, ECI rate released in June 2010 is 3.6%. The Government will increase unit pricing by .6% for the contract beginning September 1, 2010 and all remaining years of the Base Ordering Period, as well as the Optional Ordering Period.

A decreasing rate of inflation would follow the same pattern as above. For example, if the ECI decreases by more than 3.0%, then the unit prices for the remaining out-years will also decrease by the percentage in excess of 3.0%. For example, ECI rate released in June 2010 is -4.2%. The Government will decrease unit pricing by 1.2% for the contract period beginning September 1, 2010 and all remaining years of the Base Ordering Period, as well as the Optional Ordering Period.

5. Common pricing includes all supplies, services and other costs to deliver Title IV servicing under this contract, including:
 - Costs for bringing contractor systems into compliance for handling federally held debt.
 - Costs for legislative, regulatory or policy changes that affect the FFEL community as a whole, as is commercially accepted practice in the FFEL community.
 - For all other costs, the Department and the contractor(s) may come to an agreement via change order process or negotiation, as necessary.
6. The Government makes no guarantee to any contractor that their organization will retain their current loan servicing volume. In addition, the Government makes no minimum

volume guarantees to any contractor. The Government does guarantee a minimum dollar/revenue amount of \$5,000,000 over the base ordering period under this Indefinite Delivery, Indefinite Quantity contract, regardless of the number of loans serviced by a contractor.

7. The Government reserves the right to periodically review and equitably adjust the rate structure to maintain effectiveness of the services provided (i.e., different volume breaks, different ties, cost allocations, etc)
8. The Government reserves the right to equitably introduce, eliminate, or modify loan deliverables/status items that are in the best interest of the Government or Borrower. (i.e., in-school deferments moved into the In-School deliverable; new deferment or forbearance categories; etc).
9. The Government reserves the right to unilaterally shift borrowers in the best interest of the Government or Borrowers, at no additional cost to the Government. It is anticipated that this will be done only with reasonable and prudent cause.
10. The Government retains the unilateral right to resolve split-borrowers as deemed appropriate by the Government, at no additional cost to the Government.

B.14 52.212-5 Contract Terms And Conditions Required To Implement Statutes Or Executive Orders—Commercial Items (Dec 2008)

- (a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- (1) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
 - (2) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78)
- (b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
 - (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110 252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
 - (3) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
 - (4) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (July 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
 - (5) [Reserved]
 - (6)(i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).
 - (ii) Alternate I (Oct 1995) of 52.219-6.
 - (iii) Alternate II (Mar 2004) of 52.219-6.
 - (7)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
 - (ii) Alternate I (Oct 1995) of 52.219-7.
 - (iii) Alternate II (Mar 2004) of 52.219-7.
 - (8) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
 - (9)(i) 52.219-9, Small Business Subcontracting Plan (Apr 2008) (15 U.S.C. 637(d)(4)).
 - (ii) Alternate I (Oct 2001) of 52.219-9.
 - (iii) Alternate II (Oct 2001) of 52.219-9.
 - (10) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
 - (11) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
 - (12) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
 - (ii) Alternate I (June 2003) of 52.219-23.
 - (13) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Apr 2008) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
 - (14) 52.219-26, Small Disadvantaged Business Participation Program— Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
 - (15) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).

- ___ (16) 52.219-28, Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)).
- X (17) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- X (18) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
- X (19) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- X (20) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- X (21) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
- X (22) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- X (23) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
- X (24) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- X (25) (i) 52.222-50, Combating Trafficking in Persons (Aug 2007) (Applies to all contracts).
___ (ii) Alternate I (Aug 2007) of 52.222-50.
- ___ (26) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).
___ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- ___ (27) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- ___ (28) (i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).
___ (ii) Alternate I (Dec 2007) of 52.223-16.
- ___ (29) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d).
- ___ (30) (i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Aug 2007) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).
___ (ii) Alternate I (Jan 2004) of 52.225-3.
___ (iii) Alternate II (Jan 2004) of 52.225-3.
- ___ (31) 52.225-5, Trade Agreements (Nov 2007) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- X (32) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (33) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- ___ (34) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- ___ (35) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- ___ (36) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- X (37) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

- ___ (38) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).
 - ___ (39) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).
 - X (40) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
 - ___ (41) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
 - ___ (ii) Alternate I (Apr 2003) of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- X (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
 - X (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - X (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - ___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - ___ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
 - ___ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
 - ___ (7) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 2008) (31 U.S.C. 5112(p)(1)).
- (d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.
- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
 - (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
 - (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require

the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (e)(1)(i) through (xi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
 - (ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (iii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
 - (iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
 - (v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
 - (vii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
 - (viii) 52.222-50, Combating Trafficking in Persons (Aug 2007) (22 U.S.C. 7104(g)).

Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.

- (ix) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
 - (x) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
 - (xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

C. STATEMENT OF OBJECTIVES (SOO)

C.1 General Description Of Scope/Purpose

C.1.1 Federal Student Aid Background/Overview

Federal Student Aid (FSA), an office of the Department, plays a central and essential role in America's postsecondary education community.

FSA's core mission is to ensure that all eligible individuals benefit from federal financial assistance—grants, loans and work-study programs—for education beyond high school. The programs FSA administers comprises the nation's largest source of student aid: during the 2007-08 school year alone, FSA provided approximately \$83 billion in new aid to nearly 10 million postsecondary students and their families. FSA's staff of 1,100 is based in 10 cities, in addition to its Washington, D.C. headquarters.

C.1.2 Current Need

With the current economic and liquidity uncertainty facing financial markets, many student loan lenders are dropping out of the market. With more than \$65 billion in 2008-09 loans and approximately \$130 billion in eligible 2003-07 student loans on bank balance sheets and auction rate securitizations, the capital markets are currently unable to generate adequate funds at prices that will ensure 2009-10 loans can be made.

Recent legislation including the College Cost Reduction Authorization Act of 2008 (CCRAA) (Pub. Law 110-84) and the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) (Pub. Law 110-227) enabled the Department to accept former Federal Family Education Loan Program (FFELP) loans in the form of additional Direct Loan (DL) capacity, and to purchase FFELP loans as far back as 2003, in an effort to bring liquidity and stability back to the student loan market.

With the sudden increase in current and potential loan volume that the Department will be responsible for servicing, the need for increasing the Title IV student aid servicing vehicles is determined appropriate at this time.

C.1.3 Objective

Acquire efficient and effective commercial contract services to manage all types of Title IV student aid obligations, including, but not limited to, servicing and consolidation of outstanding debt.

C.1.4 Constraints

C.1.4.1 Specific compliance activities for servicing Federally held assets include, but are not limited to, Attachments A-1 through A-3 provided herein.

C.1.4.2 In order to manage the costs associated with such a potentially large portfolio, the service must provide innovative measures to ensure portfolio growth is not the key driver of total cost. Contractor incentives must be based on performing assets, rather than transaction or activity based delinquency incentives. Costs may also be managed through redistribution of customers to self-service options, as approved by the Government. Performance measures will help ensure that the complete service operates as efficiently and effectively as possible and that it is achieving the desired

business outcomes. These measurements will be flexible to allow for regular reviews and revisions as necessary.

C.1.4.3 The contractor(s) will be responsible for maintaining a full understanding of all federal and state laws and regulations and FSA requirements and ensuring that all aspects of the service continue to remain in compliance as changes occur.

C.1.4.4 The contractor(s) will provide a service flexible enough to handle new requirements generated by Congress and respond to legislative mandates and policy changes. Please see Appendix A – Standards and Relevant Documents for historical and current representative information.

C.1.4.5 The contractor(s) will provide timely (as defined by FSA and contractor) responses to Office of Inspector General (OIG), General Accounting Office (GAO), budget, data, and management requests.

C.1.4.6 It is understood and mutually agreed that the Department of Education has exclusive ownership of all information stored in, retrieved, modified, and/or archived in as part of this service. The contractor shall have no rights in such information and no rights to such information shall vest on the contractor by virtue of its performance of this contract. No other party has the right to copy, delete, archive, or transfer such information without the prior express written consent of the Department of Education. The contractor shall not use such information for any marketing or solicitation purpose including, but not limited to, commercial advertising, credit offers, or similar campaigns.

C.2 Attachments/Supplemental Documents

Number	Title
A-1	Additional Servicer—Initial Requirements Document (Version 21.0)
A-2	Additional Servicer—Intermediate Requirements Document (Version 6.0)
A-3	Additional Servicer—Full Requirements Document (Version 6.0)
A-4	Ongoing Allocation Methodology
A-5	Sample—Ongoing Allocation Metric Calculation
A-6	Servicing Pricing Definitions (Version 9.0)

Attachment A-1

Additional Servicer INITIAL Requirements

All_InitialReq_v21.0.doc

Attachment A-1

Additional Servicer – Initial Requirements

Required by 8/31/09 unless otherwise noted

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Attachment A-1

General Statement

It is the intent of the Department to procure a performance-based contract(s) that promotes competition and provides best of business services. To achieve this goal, the Department expects each servicer to provide commercially available services that will yield high performing portfolios and high levels of customer satisfaction. The following statements apply:

- Servicers will be required to meet all statutory and legislative requirements.
- Servicers will use their own discretion in deciding to provide services or business functionality that is recommended but not required.
- Servicers may leverage all borrower repayment channels while maintaining existing branding provided all federally held loans are clearly distinguished and identified, and borrowers are directed to make payment directly to the Department via a U.S. Treasury lockbox or electronic payment service.
- Small differences due to rounding in various calculations are understood and accepted providing the calculation itself is in compliance with federal regulation.
- The Department will allocate volume based on defined and understood performance metrics.
- The Department does not intend to provide additional service level requirements. The Department does, however, expect best of business practices to be deployed.
- The Department will not require the use of the Department or FSA logo on letters, web sites, etc.
- Servicers will have full discretion to promote or not promote services as long as they meet legislative and regulatory requirements and are cost neutral to the Government.
- Servicers will have discretion to provide services to schools.
- Servicers may use their own authentication process as long as the process is fully compliant with federal IT security guidelines.
- With regard to split borrowers, it is acceptable for servicers to handle requests, phone calls, etc. for all loans being serviced by that servicer, regardless of the holder (Federal or Non-Federal), as long as all federal laws and regulations are met.

Financial Reporting

1. The servicer shall uniquely identify each specific activity (e.g., Collection of Principal, Collection of Interest, etc.) in the transaction level data.
2. The servicer shall provide required accounting reports. A preliminary list is presented below.
 - a) Trial Balance by Fund & a Working Trial Balance By Fund
 - b) Detailed Trial Balance by Transaction Type
 - c) Sub ledger Reconciliation Reports
 - d) Transaction Tables and mapping (Crosswalk) to the Department's general ledger system, the Financial Management System (FMS), including transaction descriptions and amount fields.
 - e) Cash Receipt Detail
 - f) Cash Disbursement Detail
 - g) Report of Debts Assigned by Assignor (Lender, GA, Intra-Fund Transfers)

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- h) Report of Loans Consolidated (by Fund, Cohort Year, Loan Program Type, Risk Category)
- i) Report of Loans Rehabilitated (if applicable)
- j) Loan portfolio performance reports (by Fund, Loan Type, cohort year and risk category).
- k) Collection Activity Report - The report summarizes by Current Month, Current Quarter, and Year to Date for each Loan Type, the number of loans and the amount of loans for each delinquency stage.
- l) Loans Transferred to and from the Department's Default Management Collection System (DMCS)- The report has 3 parts:
 - a. Loans Transferred to DMCS - Displays by transfer date the total number of borrowers, total number of loans, total principal balance at time of transfer, and date DMCS accepts the loans for each weekly transmission to DMCS.
 - b. Rejected and Re-transfer to DMCS - Displays by re-transfer date the total number of loans, total number of borrowers, total principal balance, and date DMCS accepts the loans for each weekly transmission to DMCS.
 - c. Transfers by Loan Type - Displays by transfer date, total number of borrowers, and total number of PLUS, Stafford, and Consolidation.
- m) DMCS Recall and Rehabilitation Tracking Report - The report displays by month/year the total number of borrowers recalled from DMCS, total number of loans recalled, total number of Rehabilitated loans and borrowers received from DMCS.
- n) System Balancing Reporting of daily, weekly and monthly activity sent and received with each interfacing partner at the Batch level and at the Transaction Type, Transaction Count, Transaction Amount levels. Reports activity sent and activity received; and balances activity received to activity accepted and rejected.
- o) Financial Transactions Reconciliation Report of all daily, weekly and monthly transactions posted on the servicing system for each interfacing partner. Displays summary data by financial transaction type, number, and dollar amounts.
- p) Work in Process Reports of activity received and accepted into the servicing system, but not posted to borrower accounts for each interfacing partner. Displays detail level transactions at the loan level for all financial transactions received but not posted. Includes applicable dollar amounts and reflects aging of each transaction. Reporting can include, but is not limited to, pending disbursements, loan adjustments, consolidation payoffs, etc. (See below for specific unapplied cash reporting). Daily cumulative reporting with the last daily report for the month reflecting the WIP balances as of month end.
- q) Unapplied Cash Payment Recycle report: Payment and Payment adjustment activity received and accepted into the servicing system but not posted to borrower accounts. Reporting is by payment source (including, but not limited to: lockbox, electronic debit, IPAC, etc.) Displays detail level cash payment and payment return/adjustment transactions at the borrower level and includes

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Treasury document information (schedule number, schedule amount and schedule type) and aging of each transaction. Daily cumulative reporting with the last daily report for the month reflecting the WIP balances as of month end.

- r) Ad-hoc reporting capability and access for the Department (see “Reconciliations”).

Treasury

3. The servicer shall require entities making payments on Government loans (borrowers, lenders, etc) to direct payments to a Treasury designated service including:
 - a) Treasury lockbox
 - b) Pay.gov
 - c) Remittance Express
 - d) IPAC.

Note: Receipts must be processed in accordance with guidance provided in Treasury Financial Management (TFM), available at www.fms.treas.gov/tfm/index.htm
4. The servicer shall establish an interface with the Treasury lockbox service for the receipt of payment posting file and returned payments files.
5. The servicer shall establish an interface with Pay.gov for the receipt of ACH debits and credit card payments.
6. The servicer shall establish an interface for Remittance Express (REX) to support receipt of ACH credits. REX provides FSA and the servicer with download capability of an activity file with optional fields for identifying borrower accounts.
7. The servicer shall establish an interface for the receipt and processing of Inter-Governmental Payment and Collection (IPAC) systems payments. IPAC provides FSA and the servicer with download capability of an activity file with optional fields for identifying borrower accounts.
8. The servicer shall post payments to the borrower accounts on the same date of receipt of payment information from Treasury. If the servicer directly receives payments, those payments will be deposited to Treasury on the day of receipt.
9. The servicer shall maintain a recycle or unapplied file of any payment/payment return transactions that cannot be posted to a borrower account. The servicer shall perform due diligence to research payments held in suspense for the purpose of resolving the unposted items including: posting payment to appropriate borrower account; refunding to remitter; or escheatment to Treasury.
10. The servicer shall obtain daily deposit information from Treasury's Ca\$hLinkII system to support accounting processes and controls, such as daily and monthly reconciliations.
11. The servicer shall maintain proper controls over payment posting and accounting activities, and perform daily and monthly required reconciliations.
12. Issuance of Refunds - The servicer shall promptly manage credit balance accounts, and other payments and accounts requiring a refund. The Servicer shall process refund transactions to borrowers (borrower overpayments), lenders (such as consolidation overpayments), etc.

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- a) The servicer shall establish an interface and process payments refunds via interface via interface with FSA's Financial Management System (FMS) using the FMS standard file format (see FMS Attachment A).
- b) Batches of refunds shall be subject to FSA review and approval.
- c) The servicer shall receive and work from a Treasury Confirmation Report available through Treasury's Government-Wide Accounting System (GWA). This confirmation data will be used to provide information to borrower inquiries on refund status. The GWA report confirms the completion of processing on a batch, and provides the first and last check number for the batch.
- d) The servicer shall receive a report of Treasury Cancellations, maintain cancellation data, and shall provide information for borrower inquiries and support re-issuance of refunds.
- e) The servicer shall perform due diligence on cancelled refunds, on issuance of validated refunds, and will follow Treasury guidelines for escheatment.
- f) The servicer shall request FSA to cancel refunds, when appropriate.
- g) The servicer shall use FSA's student application internet gateway (SAIG) to transmit refund requests to FMS.
- h) The servicer shall pass Treasury cancellation data to FMS using the FMS standard file format (see FMS Attachment A).

Transaction Management

13. The servicer shall establish a system and processes to correctly record all transactions on their database and to post summary transactions to the FSA's general ledger (FMS) on the same business day they are generated.
14. All servicer transactions shall include all fields as required by FMS and all amounts applicable to each transaction type.
15. All servicer transactions must pass all FMS edits for posting into the general ledger.
16. The servicer shall ensure all transactions are reversible.
17. The servicer shall provide unique transaction reporting for each type of loan activity.
18. All servicer transactions will be accurately translated (mapped) from the Servicer's subsidiary ledger to FSA's general ledger (FMS).
19. The servicer shall maintain both the posting date and effective date of the transactions on their system.
20. The servicer shall provide an audit trail that efficiently links their detailed transactions in the subsidiary ledger to summarized transactions in FSA's general ledger. Transactions must have sufficient audit trail to support efficient tracing.
21. The servicer shall include original Treasury document numbers on applicable transactions, in addition to any system created document numbers (including but not limited to: SF215, SF5515, SF1166, SF1098, and SF1081). The usage of Treasury documents is described on the web site <http://fms.treas.gov/index.html>.
22. The servicer shall assign and retain the Credit Reform Code (CRC), recording and reporting on all loan related transactions at the CRC level. Federal Credit Reform Act legislation and Treasury guidelines for reporting are described on the web site <http://fms.treas.gov/index.html>. Appendix A (CRC Codes) of Attachment C (FMS File Layouts) describes how CRC codes are generated.

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Internal Controls

23. The servicer shall incorporate a system of internal controls consistent with federal laws, regulations, policies and authoritative guidance. These laws, regulations, and guidances include, but are not limited to: Federal Financial Management Improvement Act (FFMIA); Federal Managers' Financial Integrity Act (FMFIA); CFO Act; Government Performance and Results Act (GPRA); GAO's Green Book; OMB Circulars A-123, 1-127, and A-130; Joint Financial Management Improvement Program (JFMIP); and Treasury Financial Manual (TFM).
24. The servicer's procedures and systems shall include a system of internal controls that ensures resource use is consistent with laws, regulations and policies; resources are safeguarded against waste, loss, and misuse; and reliable data are obtained, maintained, and disclosed in reports. Appropriate internal controls shall be applied to all system inputs, processing and outputs. Examples of Internal Control Standards to be implemented by the servicer include the following:
- a) Review and Reconciliation: Records are examined and reconciled to determine that transactions were properly processed and approved.
 - b) Execution of Transactions: Independent evidence is required to be maintained to ensure that authorizations are issued by persons acting within the scope of their authority and transactions conform with such authority.
 - c) Segregation of Duties: Proper segregation of duties is required to exist among functions including: authorization, execution, recording and reviewing transactions, custody of assets, and performing reconciliations.
 - d) Qualified and continuous supervision is required to be provided to ensure that proper internal control is maintained.
 - e) Access to and Accountability for Resources: Access to resources and custody and use of resources is required to be assigned and maintained.
25. The servicer shall provide FSA with supporting documentation for FSA's OMB Circular A-123 annual review, the annual Financial Statement Audit, and other audits and reviews (as further described in the Requirement #29 below on Audit Support Services and in Audit Attachment A, "Audit Support Requirements").
26. The servicer shall consult with FSA during FSA's OMB Circular A-123 annual review process and for other audits, so that FSA can: (a) maintain its understanding of the servicer's controls (in the context of GAO Internal Control Standards and the Committee on Sponsoring Organizations (COSO) control framework), (b) maintain FSA documentation depicting the servicer's controls and process flows (as further described in Requirement #29 below on Audit Support Services and in the attachment, "Audit Support Requirements"), and (c) maintain FSA's test plan, which will call for the provision of supporting materials from the servicer.
27. The servicer shall be responsible for resolving all deficiencies identified during audits and participating in corrective action plans as needed.
28. The servicer shall provide FSA with support for conducting FSA site visits to servicer centers of operation. The purpose of the site visits will be to enable and enhance FSA's plans for the conduct of its A-123 review. In addition, during the site visit, FSA

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will observe the execution of selected processes for compliance with stated procedures and system function.

29. The servicer shall provide Audit Support Services, upon request, including but not limited to the following audits and reviews. The “Audit Support Requirements” document attached provides additional information on the annual Financial Statement Audit and describes the “Prepared by client” (or PBC) process that will be used by the auditor and/or FSA to submit requests for documentation, data, and/or walkthroughs and for the servicer to fulfill these requests.:

- a) FSA’s annual Financial Statement audits;
- b) Assessments of internal controls in accordance with FMFIA and OMB Circular A-123, Appendix A;
- c) Program-specific financial and compliance audits conducted by GAO, OIG, and/or OMB;
- d) FISMA audits;
- e) Certification and Accreditation reviews;
- f) Internal reviews;
- g) Contract oversight activities; and
- h) Agreed Upon Procedures Audits for Loan Purchase Programs.

This support generally includes, but is not limited to: making resources and facilities available, participating in audit planning (such as to determine when resources would be made available and for what purpose), responding to “prepared-by-client” (PBC) requests, reporting status, and remediating deficiencies identified. At a minimum, PBC requests will include: interviews, access to process and system documentation, standard and ad hoc queries and reports, and general questions on processes, systems, data, and/or other matters.

30. The servicer shall meet requirements for a Type II SAS 70 audit. It is anticipated that performance of the Type II SAS 70 audit with an unqualified opinion and submission of the resulting work papers will eliminate or substantially reduce audit work performed by various auditors, internal and external to the Department, as part of the Department-wide and Government-wide annual audits. As part of their contracts with various lenders, servicers also normally have a SAS 70 audit performed annually by a qualified independent auditor.

- a) For IT controls, the servicer shall supplement the Type II SAS 70 with additional agreed-upon procedures resulting in an audit consistent with GAO’s Federal Information System Control Audit Manual (FISCAM). The results of these procedures should be conducted and reported at least annually, with a year-end of 6/30. Further, the servicer shall provide FSA with a “bridge letter” covering the period from 6/30 to 9/30 indicating no changes to the control environment.
- b) For operational controls, the servicer shall ensure that the Type II SAS 70 covers all GAO Internal Control Standards or COSO Components (e.g., control environment, risk assessment, control activities, information and communication, and monitoring) for those transactions processed by the servicer. The results of these procedures should be conducted and reported at least semi-annually covering the periods 1/1 – 6/30 and 7/1 – 12/31.

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Accounting

31. The servicer shall create a financial interface between the FSA servicer and FSA Financial Management System (FMS) to provide financial data to FMS on a daily, weekly and monthly basis.
 - a) The data and data layouts to be provided within this interface are described in the FMS Attachment C – FMS File Layouts
 - b) Submission / send rules for these transmissions are:
 1. In addition to daily transaction files, servicer shall send weekly (summary) and monthly (interest and adjustment) files to FMS.
 2. Servicer shall use secure FSA's SAIG mailbox to place daily, weekly and monthly files on the FMS server for processing in FMS.
32. The servicer shall conduct accountancy, ensuring that transactions of the servicer's subsidiary ledger are accurately recorded in the FMS general ledger, to include:
 - a) Managing the accounting transaction processing between the subsidiary ledger and the general ledger.
 - b) Preparing procedural instructions and execution of manual procedures related to the preparation of accounting transactions.
 - c) Reconciling cash, accounts receivable, accounts payable, and other general ledger accounts.
 - d) Correcting all differences between the subsidiary ledger balances and the control account balances in the general ledger.
 - e) Assisting FSA, FMS, and CFO in posting financial data and recommending alternatives to resolve rejected activity and variances.

Reconciliations

33. The servicer shall perform reconciliations of balances and activity as requested, that meet the following general requirements:
 - a) Reconciliation activity should demonstrate that all required data is transmitted to the Department and that all omissions, duplications of data, and recording errors are detected and corrected timely.
 - b) All reconciliations and financial accounting will be inclusive of principal, interest and fee amounts.
 - c) Monthly reconciliation between Servicing Trial Balance by Portfolio and FSA's general ledger (FMS) trial balance for each individual balance sheet account (balances and activity).
 - d) All programs are to be accounted, reported and reconciled individually (distinct portfolios).
 - e) Portfolio balances must be supportable at the loan level.
 - f) Unless otherwise instructed, all reconciliation processes must identify and define specific transactions causing differences.
 - g) Unless otherwise instructed, all requirements apply to each portfolio.
 - h) Monthly reconciliations are due to FSA by the 8th calendar day of the subsequent month. (e.g. Reconciliations for the month of June are due July 8th.)
 - i) Monthly reconciliations require contractor review by at least one level of management.

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- j) Monthly reconciliations require the signature of the preparer and reviewer and the date of signatures.
 - k) Signed monthly reconciliations and all necessary supporting documentation are to be provided to FSA in Adobe .pdf format.
 - l) The servicer shall provide reports in the file format requested by FSA. File format types would include, but are not limited to: the Microsoft Office Professional Suite (Excel, Word, Access, etc.), Adobe (.pdf), text (.txt), comma delimited (.csv) etc.
 - m) Daily reconciliations are not standard deliverables to FSA but are considered operational processes and subject to internal control testing.
 - n) Unless otherwise instructed, all reconciling items arising from monthly reconciliations are to be researched and cleared within the month subsequent to the reconciled period. For example, reconciling items for the month of June must be cleared within July. This eliminates repeat reconciling items.
 - o) Unless otherwise instructed, all reconciling items arising from daily reconciliations are to be researched and cleared within 48 hours.
 - p) Daily reconciliations include tracking and resolution of all work in process activity.
34. The servicer shall reconcile loan sales as follows:
- a) Perform daily 3-way reconciliation between invoice (pre-sale report), Bill of Sale from selling lender, and conversion reports from servicing system. Offeror must be able to produce the reconciliation at the deal, invoice, lender and summary level.
 - b) Perform daily and monthly over/underpayment reconciliation between the Selling lender, servicing system, FMS and Treasury.
 - c) Maintain resulting accounts receivable/accounts payable reconciliation of over/underpayment activity between the Selling lender & FMS. To include:
 - 1. Maintain balance of receivables from sellers and payables to sellers.
 - 2. Invoice sellers for accounts receivables.
 - 3. Process FMS accounts payable refund request to sellers (see Refund Reconciliations for specific requirements).
 - 4. Process overpayment refund collections from Selling lenders.
 - 5. Maintain clear audit trail of overpayment refund transactions processed to Treasury deposits.
 - d) Daily reconciliation to assure that the FMS net funding transactions purchasing loans equal the net loans accepted and either posted or pending posting (traceable in work in process files) to the servicing system by the next day.
 - e) Daily reconciliation of activity sent from sellers to accepted and either posted or pending posting (traceable in work in process files) on the servicing system.
35. The servicer shall reconcile transfers as follows:
- a) Servicer will provide for loan exchange and reconciliations between servicing system and FSA servicing systems. Servicer will maintain portfolio integrity upon re-entry into the servicing system.
 - b) Perform daily reconciliation on transfers of loans between the Servicing system and each FSA servicing system.

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- c) Perform monthly reconciliation of transfers of loans between the servicing system and each FSA servicing system.
36. The servicer shall reconcile cash collections as follows:
- NOTE: The terms “recycle file”, “suspense account” and “unapplied file” are defined as the transactional level cash payments and payment adjustments received but not posted to borrower accounts on the servicing system.
- a) Record all incoming check & electronic collections received (deposits) to the cash clearing account (level 1); reverse collection transactions from cash clearing account when posted to borrower accounts (level 2).
 - b) The application process for postable cash payments and payment returns must be completed within 48 hours of collection receipt.
 - c) Reconcile all cash activity to Treasury daily. This includes, but is not limited to: electronic funds transfer (EFT), checks (SF 1166), Intra-governmental Payment and Collection (IPAC) System/SF 1081 payments, internal electronic cash transactions, and any other payments to or deposits with Treasury.
 - d) Perform daily collection reconciliation among the various Treasury receipt channels (i.e. Lockbox, Pay.gov, Remittance Express, and IPAC), servicing system and FMS general ledger. Collection transactions are to be posted to FMS daily.
 - e) Daily reconciliation to ensure Total Cash Received (check and electronic) = (Total Cash Payments Posted to Borrower’s accounts + New Recycle File Items).
 - f) Daily reconciliation to ensure Outstanding Recycle File Balance = Beginning Recycle File Balance + New Recycle File Items - Recycle File Items Posted to Borrower Accts - Refunds of Misdirected Payments - Treasury Escheatment.
 - g) Monthly reconciliation of the Servicer’s unapplied cash payment recycle file balance at the servicing system to the FMS Unapplied Collections general ledger account.
 - h) Monthly reconciliation of Treasury bank statement to FMS and Treasury.
37. The servicer shall reconcile refunds as follows:
- a) Maintain daily and monthly three-way reconciliation of refund activity among the servicing system, FMS accounts payable system and Treasury.
 1. Process overpayment refunds, refund cancellations, and stop payments posted to borrower accounts.
 2. Refund transactions processed on the servicing system for misdirected payments.
 3. Track and reconcile refund transactions to refund requests (FMS accounts payables) to Treasury confirmations.
 4. Track and reconcile refund cancellation transactions processed on servicing to refund reversals in FMS to Treasury cancellations.
38. The servicer shall provide ad hoc reporting tools to support reconciliations: Servicing Trial Balance by Portfolio – using FSA/FMS transactional account mapping, must be capable of producing daily, weekly, ad hoc, and monthly trial balances at a summary and detailed transactional. If multiple databases are employed each database will be reported individually as well as on a consolidated basis.

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39. The servicer shall perform daily, weekly and monthly system balancing of all data transmitted to and from the servicing system.
- a) Balancing will be done at the transaction type, transaction count and transaction amount(s) levels.
 - b) Balancing will ensure data sent = data received; and data received will = the sum of data accepted and rejected.
 - c) Rejected data will be researched, resolved/resent by the originating system.

Additional Reporting

40. The servicer shall provide a data file (daily for the previous day's activity, monthly for previous month's activity) to FSA containing standard data elements needed for additional financial and portfolio analysis. FSA will determine the type of file, transfer specifications, and specific data elements to be included in the file.
41. The Servicer shall ensure that the balances reported to FSA within the daily/monthly data files reconcile to the balances reported in the Servicer's servicing system as well as to the Servicer's FMS accounting interface file.
42. The servicer shall provide reasonable additional support as needed (e.g., data files, reports, source documents) to substantiate reported activity and balances.

Security

43. The Servicer shall restrict access to FSA held loans being serviced from all other loans on their system. Access must be limited to personnel who have obtained proper clearances and who are specifically authorized to view or perform transactions and services on loans held by FSA.
44. The servicer shall provide previous security information from the past three years to include a discussion of security incidents; and audits like SAS 70s, Sarbanes Oxley reviews, independent security assessments, risk assessments, and/or internal reviews along with the applicable remediation plans.
45. The servicer shall provide its system's most current vulnerability scan results, and remediation plan.
46. The servicer shall provide existing security documentation like its security organizational structure, its system's boundary, existing security policy, procedures, and plans.
47. The servicer shall complete personnel background screening requirements ASAP.
- a) All personnel are required to complete a federal background clearance based on their position risk level. Background clearances are submitted on line via Office of Personnel Management (OPM)'s Electronic Questionnaire for Investigations Process (e-Qip). Contractor employees who have undergone appropriate personnel security screening for another federal agency may submit proof of personal security screening for validation. (Attached Security Attachment A - Department of Education's Directive for Contractor Employee Personnel Security Screenings.)
 - b) Preliminary clearances must be completed for high-risk positions prior to working on Federal Student Aid systems or data (This process can take 2-6 weeks).

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Moderate and low risk positions must submit background clearance paperwork prior to working on Federal Student Aid computer resources.

- c) Non-U.S. Citizen may be assigned to a High Risk IT (6C) level position, provided: he/she is a Lawful Permanent Resident of the United States and has resided continuously in the United States for a minimum of three (3) years. Non-U.S. Citizens living outside of the United States cannot have the capability to access Federal Student Aid systems or data.
48. The servicer shall complete a self-assessment of its system and facilities based on NIST SP 800-53 controls, identify security deficiencies/gaps, and create a remediation plan for the identified deficiencies.
49. The servicer shall agree to provide support for all actions required for a formal security authorization and continuous monitoring program as defined by NIST SP 800-37.
50. The servicer shall create a project plan that they will follow to develop a NIST SP 800-18 compliant System Security Plan created in the Department of Education format.
51. The servicer shall bundle the requested information in requirements 39 - 45 above as attachments to a discussion document that provides a discussion for each requirement and artifact submitted. The cover page for this package will include a self-certification document identifying the system's security posture to include its overall security risk. The cover page will be signed by the servicer's senior security official and program manager attesting that the information within the package is accurate.

NSLDS

52. The servicer shall report in the same format as a Guaranty Agency (GA) for all loans serviced for Federal Student Aid by creating an NSLDS data base extract file containing FFEL loans and transmit the FFEL Loans data to NSLDS using the reporting requirements detailed in the GA Data Provider Instructions with minimal differences. The Servicers will be provided a GA and Lender Code to be associated with each loan. The Servicers will report the date of default and loan status for default as day 271, using NSLDS loans status fields. The Cohort Default Rate date will be reported at day 361, using the NSLDS Claim Payment fields. A list of these filed changes will be provided. The GA Data Provider Index of fields that are required of the FFEL servicers in addition to more information on Guaranty Agency Data Provider Instructions can be found at the GA DPI Link (<http://ifap.ed.gov/nsldsmaterials/0605DPInstNSLDS.html>).
53. The servicer shall use the NSLDS provided DataPrep software (or equivalent) to perform Extract Validation and create a Submittal file.
54. The servicer shall send the submittal file to NSLDS on an established weekly schedule.
55. Once loans have been reported, the servicer shall report to NSLDS all FFEL open loans. Closed loans must be continually reported until closed status is successfully accepted by NSLDS. This includes loans that are closed prior to initial NSLDS reporting.

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56. The servicer shall retrieve the Load Process Error file from NSLDS for each submittal. The servicer must review errors and correct as many as possible before the next weekly submittal.
57. The servicer shall identify when key borrower indicators have change and report on both the old data and the new data.
58. The servicer shall work with other data providers—including other GAs, the Direct Loan Program, the Debt Management Collection System, Perkins schools, and the Common Origination Disbursement System—to resolve identifier conflicts including assigning pseudo SSNs where appropriate (see NSLDS DPI).
59. The servicer shall update date, amount and reason for defaults based on current default criteria if the loans are transferred to DMCS or CDDTS. Once a loan has transferred to DMCS or CDDTS, stop reporting on the loan unless it is transferred back. When transferring loans the borrower and loan identifiers must be the same identifiers reported to NSLDS. For Rehabilitated Loans, the Date or Maturity should not change.
60. The servicer shall report as a GA for all loans serviced for Federal Student Aid.
61. The servicer shall utilize NSLDS on-line updating functionality to resolve customer service issues and to report loan discharge and Teacher Loan Forgiveness information.
62. The Servicer shall transmit data to and from NSLDS via the Student Aid Internet Gateway (SAIG) or other approved secure transmission methods. Additional information on SAIG transmissions can be found at <https://www.fsadownload.ed.gov/mainframeguide.htm>.
63. The servicer shall meet NSLDS reporting requirements and quality standards. All data submitted to NSLDS must be as complete and correct as possible.
64. The servicer shall accept and store enrollment data and updates from NSLDS as the official source of such data.
65. The servicer shall continue to follow Common Manual Delinquency reporting to schools.
66. The servicer shall provide additional data elements to the re-engineered NSLDS. These elements will include, but not be limited to: delinquency data, discharge data, forgiveness data, and school/ISIR data. This data has been worked through the community on the FFEL Data Standards Team and can be found online.
67. The servicer shall work with FSA data providers on changes to interfaces as re-engineering projects occur.
68. The servicer shall accept a file from NSLDS when receiving loans from DMCS and CDDTS in order to update the records with missing data elements.

Unique Client/Lender Requirements for Federally Serviced Portfolio

69. The servicer shall use the client name Department of Education for this portfolio.
70. The servicer shall use the Government assigned client LID for this portfolio.
71. The servicer shall use the Government assigned Guarantor Code for this portfolio.
72. Each servicer will be assigned a unique code.

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73. The servicer shall maintain unique standard reporting for loans within each Program (i.e. 08/09 Loan Purchase Program, Puts from 08/09 Participation Program, 09/10 Loan Purchase program, Conduit, Direct Loan, etc.)
74. The servicer shall process refunds via Treasury checks. Refunds are required for overpayments greater than or equal to \$5.00.
75. The servicer shall perform small balance processing as follows:
 - a) Overpaid Amount – Small balance write-ups of overpaid balances less than \$5.00.
 - b) Underpaid Amount – Small balance write-off of underpaid balances less than \$25.00.
76. The servicer shall have the ability to charge late charges, but no assessment of late charges on loans in the ED portfolio is to be assessed at this time.
77. The servicer shall have the ability to charge other fees (i.e. NSF), but no charges for other fees on loans in the ED portfolio are to be assessed at this time.
78. The servicer shall have the ability to support borrower benefit plans required by each loan purchase (PUT) program.
79. 799/LARS reporting is not required for ED portfolio.
80. The servicer shall have the ability to perform collection and due diligence activities "as required by legislation and/or regulations." Servicers will be required to provide collection and default aversion activity on loans serviced under this contract as long as the loan remains on the servicer's system. If a borrower reaches the 360 days delinquent, the servicer will be required to transfer the loan to the DMCS.
 - a) The servicer shall send an electronic transfer file to DMCS with required information about the defaulted borrower and the defaulted loan.
 - b) The servicer shall provide access to all required collateral information for the defaulted loan.
 - c) The servicer shall accept and resolve rejected records received from DMCS.
81. The servicer shall process discharge transactions with required supporting documentation following the required regulatory guidelines. The servicer is required to facilitate the timely and accurate processing of discharge requests by ensuring that complete loan discharge documentation for the individual is submitted. The servicer is also required to make a determination based on complete loan discharge documentation and applicable guidelines. Depending on the discharge type, the Department reviews discharge decisions through a sampling methodology or conducts a complete review.
82. The servicer shall transfer loans to the Conditional Disability and Discharge System once loans have been determined as eligible to be transferred.
83. The servicer shall obtain school information needed from the Postsecondary Education Participants System (PEPS).
84. The servicer shall be prepared to provide procedure and/or training materials when requested by ED. ED may review these documents to ensure regulatory and legislative requirements are met.
85. The servicer shall be required to transfer loans to, or accept loans from, another servicer at the request of ED.

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86. The servicer shall provide access to account level information and collateral for all federally held loans using technology supported by ED (web-based, terminal emulation, etc.).

Loan Conversion

The loan conversion process occurs when a seller requests ED to purchase loans, and ED validates the seller's approval to participate, checks the eligibility of the loans, provides payment to the seller, and takes ownership of the loans as federally held assets.

Below are the requirements a servicer must complete in addition to the existing requirements to service an FFEL loan:

87. The servicer shall create and maintain a Loan Purchases Tracking Log - to include: Checklist of loan purchase activities, status of activities, and loan counts/amounts. SEE Conversion ATTACHMENT A – Sample of Loan Purchases Tracking Log.
88. The servicer shall provide Loan Purchases Tracking Log to FSA, CFO, and OCFO on a periodic basis.
89. The servicer shall accept 45-day notices submitted by sellers via email. SEE Conversion ATTACHMENT B – Sample of 45 Day Notice.
90. The servicer shall inform FSA when a 45-day notice has been received.
91. The servicer shall send an acknowledgement of receipt of the 45 Day notice to the Seller via email.
92. The servicer shall validate, with FSA contact, the status of the seller's Master Loan Sales Agreement (MLSA).
93. The servicer shall notify seller if any additional MSLA approvals or documentation are needed for the sale and schedule the sale date with the seller's Servicer.
94. The servicer shall notify FSA of the status of the MLSA package, if necessary.
95. The servicer shall perform testing of the loan conversion transfer file process with sellers. SEE Conversion ATTACHMENT C – Sample of a loan conversion transfer file layout.
96. The servicer shall receive loan conversion transfer file from the seller via FTP or other approved transfer method.
97. The servicer shall review the loan conversion transfer file and notify FSA, CFO, OCFO of differences between the 45-day notice and loan conversion file as needed.
98. The servicer shall perform edits on the loan conversion transfer file. Note: edits may vary based on purchase program.
99. The servicer shall prepare report identifying any errors with the loan conversion file and/or any loans not eligible for sale.
100. The servicer shall provide results of edit errors to the seller, FSA, and designated parties. The servicer shall work with the seller to resolve errors.
101. The servicer shall send an acknowledgement of receipt of the 45 Day notice to the Seller via email."
102. The servicer shall work with the Seller to confirm sales parameters, including but not limited to:
 - a) Identify any loans in the sale have any liens on them.

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- b) Identify if the loans are part of a Put from Participation or a straight Put to the Department.
 - c) Identify timing for receipt of Loan Conversion Transfer file from the Servicer, if needed.
103. The servicer shall calculate pre-sale totals and final purchase price after errors have been resolved.
 104. The servicer shall create a pre-sale detail loan report including loan details for all loans included in the sale. SEE Conversion ATTACHMENT D – Sample of pre-sale detail loan report.
 105. The servicer shall transmit pre-sale detail loan schedule to seller for validation by seller.
 106. The servicer shall create invoice total file and submit to SAIG mailbox to be 'swept' by FSA CFO. SEE ATTACHMENT Conversion E – Invoice total file layout.
 107. The servicer shall receive Bill of Sale and related documents. SEE Master Loan Sale Agreement – Exhibit B – Sample of Bill of Sale.
 108. The servicer shall validate Bill of Sale package is authorized and complete.
 109. The servicer shall validate Schedule and Security Release Certificate (SRC) has been received if loans are subject to a security lien. SEE Master Loan Sale Agreement – Exhibit E – Sample of Schedule and SRC.
 110. The servicer shall flag loans subject to a security lien in Tracking Log.
 111. The servicer shall accept Notice of Assignments from seller and notify FSA that payment will be sent to designee if a Notice of Assignment is received. SEE Conversion ATTACHMENT F – Sample of Notice of Assignment.
 112. The servicer shall compare FSA Servicer pre-sale totals to seller's pre-sale detailed listing of loans sold - identify and resolve differences.
 113. The servicer shall request seller to provide updated Bill of Sale documents as needed.
 114. The servicer shall validate FSA approves/disapproves invoice of payment.
 115. The servicer shall process the loan sale transaction on servicing system when notified payment has been made. Loans now reside on FSA Servicer's system.
 116. The servicer shall reconcile the Servicing System balance and activity to FMS for each purchase deal. Resolve and differences and provide the reconciliation to FSA.
 117. The servicer shall reconcile the Servicing System balance and activity to FMS on a monthly basis. Resolve and differences and provide the reconciliation to FSA.
 118. The servicer shall receive collateral documentation and review for completeness.
 119. The servicer shall identify and notify seller of missing collateral documentation, work with seller to obtain required documentation.
 120. The servicer shall notify FSA of receipt of collateral and completeness of documentation.
 121. The servicer shall provide storage for, and access to, collateral documentation.
 122. The servicer shall accept, edit and process loan adjustment files from Servicer after close of sale.
 123. The Servicer shall coordinate with the Seller to receive and process any sales transition and post sale transactions, including but not limited to, borrower

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payments, loan cancellations, school refunds, NSF transactions for loans purchased by the Department.

124. The Servicer shall provide a process to Put any ineligible loans back to the Seller, as needed (process "Unput" transactions).

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Additional
Servicer
INTERMEDIATE
Requirements

All_IntermediateReq_v6.0

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Additional Servicer – Intermediate Requirements

Required by 3/31/10 unless otherwise noted

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General Statement

It is the intent of the Department to procure a performance based contract(s) that promotes competition and provides best of business services. To achieve this goal, the Department expects each servicer to provide commercially available services that will yield high performing portfolios and high levels of customer satisfaction. The following statements apply:

- Servicers will be required to meet all statutory and legislative requirements.
- Servicers will use their own discretion in deciding to provide services or business functionality that is recommended but not required.
- Servicers may leverage all borrower repayment channels while maintaining existing branding provided all federally held loans are clearly distinguished and identified.
- Small differences due to rounding in various calculations are understood and accepted providing the calculation itself is in compliance with federal regulation.
- The department will allocate volume based on defined and understood performance metrics.
- The Department does not intend to provide additional service level requirements. The Department does, however, expect best of business practices to be deployed.
- The Department will not require the use of the Department or FSA logo on letters, web sites, etc.
- Servicers will have full discretion to promote or not promote services as long as they meet legislative and regulatory requirements and are cost neutral to the government.
- Servicers will have discretion to provide services to schools.
- Services may use their own authentication process as long as the process is fully compliant with federal IT security guidelines.
- With regard to split borrowers, it is acceptable for servicers to handle requests, phone calls, etc. for all loans being serviced, regardless of the holder as long as all federal laws and regulations are met.

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Financial Reporting

The following Financial Reporting Requirements are required to be implemented by September 30, 2009:

1. The servicer shall produce the Treasury Report on Receivables (TROR), for each portfolio, on a monthly basis. The report must meet all Treasury/FMS guidance (See Treasury attachments A & B). The TROR must also:
 - a. Be provided in Microsoft Excel Format;
 - b. Be provided for the previous month by the 8th business day of the current month;
 - c. Include all supporting data / documentation. The supporting documentation must also be provided for the previous month (e.g., aging information, status information, etc.) in Microsoft Excel format, by the 8th business day of the current month.
2. The servicer shall provide all remaining required accounting reports.
 - a. Consolidating Trial Balance (All Funds)
 - b. Monthly & Annual Sub ledger Reports (to include Closing reports)
 - c. Accounting Distribution Reports
 - d. Specific Collection Reports (e.g. Lockbox, ACH Credits, ACH Debits, Web payments, Credit Cards, etc.)
 - e. Receivable Aging Reports (by Fund, Cohort Year, Loan Program Type, Risk Category)
 - f. Loan Portfolio Analysis
 - g. SF-224 for cash transactions with Treasury ED Form
 - h. Trial balance reports indicated under Reconciliation
 - i. Loan portfolio performance reports (by Fund, Loan Type, cohort year, & Risk Category)
 - j. Others as determined

Treasury

In 2010, Treasury will implement the Transaction Reporting System (TRS). TRS will be a centralized repository of detailed collection transaction information. TRS will provide integrated transaction and deposit reporting of revenue activity across all collection systems. Therefore, the servicer will be required to migrate its data recipient interfaces for the Lockbox (checks and ACH credits), Pay.gov (ACH debits and credit card payments), and CA\$HLINKII (which reports detail for ACH credits that are not processed via the lockbox servicer, and reports summary for all deposits from all sources) to TRS. This requirement is estimated to be effective by September 30, 2010. Treasury's web site contains further information on the TRS project at <http://www.fms.treas.gov/trs/index.html>.

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Transaction Management

NO Additional Requirements beyond the Initial Requirements

Internal Controls

3. Effective from the first government fiscal year of operations (i.e., as of 9/30/2009), the servicer shall develop and execute the following reports in response to financial statement audit "Prepared-by-Client" (PBC) data requests or as requested by management to support other audits or reviews:
 - a. Collections Download
 - b. Write-Offs activity – Download Requirements & Documentation Requirements
 - c. Download of Transfers activity to DCMS
 - d. Additional work products to support responses to auditor inquiries and requests

** Refer to the FMS_Attachment_D document attached for additional details on these requirements.

4. The Servicer shall provide support to FSA in compliance with OMB Circular A-123, Appendix C, which incorporates the Improper Payments Information Act of 2002 (IPIA).

Accounting

NO Additional Requirements beyond the Initial Requirements

Reconciliations

5. The servicer must demonstrate that all data transfers (e.g., interfaces, files) are balanced across systems and reconciled at the transaction and balance level and all exceptions noted are aged and resolved timely. The servicer shall report aging of reconciling items on all reconciliations. The servicer shall resolve errors and/or variances timely, generally within one month.

Additional Reporting

6. The Servicer shall provide a Disbursement Date Change (Cohort Year) Report (required to be implemented by September 30, 2009) - The report

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displays all disbursement date changes after each quarter end that crossed cohort years. It displays the Account Number, Loan Identification Number, Principal Balances Outstanding, Interest Receivable Balances, Principal Paid, and Interest Paid.

7. The servicer shall support the FSA implementation of a 'Data Warehouse' including the conversion of the daily/monthly file transfers to the warehouse. FSA will determine the type of file, transfer specifications, and specific data elements to be included in the file.

Security

Federal Student Aid agrees with the Office of Management and Budget (OMB) and Congress that the security of its data and IT resources is one of our highest priorities. Recognizing the need for agencies to have effective information security programs, Congress passed the Federal Information Security Management Act (FISMA) of 2002. FISMA provides the overall framework for ensuring the effectiveness of information security controls that support federal computer operations and assets. **FISMA requirements apply to all federal contractors and organizations or sources that possess or use federal information or that operate, use, or have access to federal information systems on behalf of an agency.** FISMA mandates the use of the standards created by the National Institute of Standards and Technology (NIST). and Federal Student Aid has adopted those standards and guidance for securing its information technology resources.

Federal Student Aid security requirements indicated below ensure the confidentiality, integrity and availability of its data at a high level. System controls need to be tested and system documentation reviewed using an independent source. If adequate security is in place, Federal Student Aid will provide a formal security authorization to operate (ATO). Additional detailed requirements can be found in NIST security standards, special publications, and bulletins; OMB memorandums; and the Department of Education (DoED) policies and procedures. The primary document Federal Student Aid uses to identify and implement controls is NIST SP 800-53. The latest version of this guidance can be found at: <http://csrc.nist.gov/publications/nistpubs/800-53-Rev2/sp800-53-rev2-final.pdf>

Personnel

8. All personnel are required to complete a federal background clearance based on their position risk level. Background clearances are submitted on line via Office of Personnel Management (OPM)'s Electronic Questionnaire for Investigations Process (e-Qip). Contractor employees who have undergone appropriate personnel security screening for another

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federal agency may submit proof of personal security screening for validation. ([Attached: Department of Education's Directive for Contractor Employee Personnel Security Screenings](#))

9. Preliminary clearances must be completed for high-risk positions prior to working on Federal Student Aid systems or data (This process can take 2-6 weeks). Moderate and low risk positions must submit background clearance paperwork prior to working on Federal Student Aid computer resources.
10. Non-U.S. Citizen may be assigned to a High Risk IT (6C) level position, provided: he/she is a Lawful Permanent Resident of the United States and has resided continuously in the United States for a minimum of three (3) years. Non-U.S. Citizens living outside of the United States cannot have the capability to access Federal Student Aid systems or data.
11. All personnel are required to successfully complete initial security awareness training within two weeks of employment and annual refresher training. The training can be completed on line using DoED's security training program.
12. Annual specialized training is required that is appropriate to job function.

Facility

13. Data Centers supporting Federal Student Aid systems are required to have controlled access with working security cameras..
14. Data center access control lists must be kept current. .
15. Visitors must be logged and escorted at all times.
16. Power equipment and power cabling for the information system must be protected from damage and destruction. Facility failover power and lighting are required for emergencies.
17. The facility must employ and maintain fire suppression and detection, water damage controls, and temperature and humidity controls.
18. Alternate data center worksites are required to have the same protections as the primary data center site.

Telecommunications

19. Data transfers of PII or other sensitive information must be encrypted using NIST certified encryption methods ([see NIST standard, FIPS 140-2](#))
20. All interconnections must be documented and have an Interconnection Security Agreement in place. ([see NIST SP 800-47](#))
21. Wireless communication containing Federal Student Aid information is not permitted within the data center.
22. The Federal Student Aid System Security Officer must approve all remote access.

Contingency Planning and Recovery

23. A contingency / disaster recovery plan is required to provide continued operational service within 72 hours of a major catastrophe.

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24. Contingency plans must be tested at a recovery site annually using both DoED and Contractor personnel.
25. The recovery site(s) must be geographically separated from the production site(s).
26. Data sanitation at the recovery site is required after testing. ([see NIST SP 800-88](#))
27. System backups must be encrypted and kept at an alternate location with secured access. Sensitive backup tapes must be marked and have a secure transfer. ([Attached: Federal Student Aid's General Support System and Major Application Backup Media Handling Policy & Procedures](#))

Risk Management

28. Annual self-assessment of security controls is required. .
29. Independent risk assessments will be completed prior to system's operation and then reassessed at a minimum of every three years.
30. Independent security controls assessment will be completed.
31. All identified vulnerabilities and security weaknesses will be captured and corrective actions tracked through Federal Student Aids Operational Vulnerability Management Solution (OVMS). Security remediations must be implemented to correct security deficiencies and appropriate evidence must be provided to close actions.
32. Contractors will make themselves and the site available for security audits and control assessments. This includes interviews with key security staff, data gathering and submissions, scanning support, and escort activities.
33. Federal Student Aid will have the right to test controls through independent scanning within the boundaries of the Federal Student Aid system and by other means like interviews, observations, and to document reviews.

Security Documentation

34. The contractor will develop, implement, and maintain a current system security plan (SSP) for the information system to provide an overview of the security requirements for the system and a description of the security controls in place or planned for meeting those requirements. Designated officials within Federal Student Aid will review and approve the plan. ([see NIST SP 800-18](#))
35. A contingency plan must be created, approved, and tested annually.
36. A configuration management plan must be created, approved, and implemented.
37. Documented system boundaries are required. A documented inventory of hardware and software utilized, telecommunication interconnections and a network topology are required. ([Attached: Federal Student Aid's Boundary Definition template](#)).
38. System access authorizations and signed rules of behavior must be maintained.

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39. Plans of Actions and Milestones that address security remediations are maintained in Federal Student Aid's Operational Vulnerability Management Solution.

Security Monitoring and Detection

40. Network intrusion detection systems (NIDS) and host-based intrusion detection systems (HIDS) are configured appropriately and continuously monitored and updated if necessary.
41. Systems will have appropriate auditing capabilities enabled.
42. System logs are to be analyzed for suspicious activity. Logs will be made available to Federal Student Aid upon request.
43. Compliance monitoring established for configuration settings.
44. Routine network and database scans are scheduled. The scan results are analyzed and vulnerabilities identified. The identified vulnerabilities and actions taken will be documented in OVMS.
45. Scans that identify web vulnerabilities will be completed. Scan results will be provided to FSA upon request. The identified vulnerabilities and actions taken will be documented in OVMS.
46. Security remediations must be implemented to correct security deficiencies and appropriate evidence must be provided to close actions.

Incident Response

47. Contractor must maintain an incident response plan that correlates to the DoED plan.
48. Compromises of personal identifiable information (PII) must be reported immediately so that the Department can comply with its reporting requirements to report to U.S. Computer Emergency Readiness Team (CERT) within one hour of the incident.
49. Contractor must preserve evidence and allow external forensic analysis either on-site or through shipment of components.
50. Contractor must take appropriate actions for alerts and warnings provided by DoED or through other sources. Contractor will report status of their actions as requested.

Security Configurations

51. Federal Student Aid data must be segregated from non-Federal Student Aid data.
52. Security patches must be kept current and appropriately tested prior to moving into production.
53. Server and device security configurations must be maintained in accordance with NIST security configuration standards ([See: http://checklists.nist.gov/](http://checklists.nist.gov/)).
54. Passwords must meet Federal Student Aid's password standards. ([Attached: Federal Student Aid's Password Parameters Policy & Procedures](#))

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55. Change control management procedures must be documented and followed.
56. Federal Student Aid must approve system changes prior to production implementation.
57. Data will be safeguarded commensurate with the highest categorization level based on FIPS 199.

Access Control

58. Federal Student Aid must approve all access to Federal Student Aid data and all contractor access that can affect any component within the system's boundary.
59. Application access reports need to be sent quarterly to Federal Student Aid for certification of access.
60. A listing of IT personnel responsible for operations and maintenance of any Federal Student Aid system must be provided on a quarterly basis to FSA for certification of access.
61. Access must be restricted based on least privilege. Role based access controls should be defined and documented.

NSLDS

62. The Servicer shall provide the National Student Loan Clearinghouse monthly updates to their federally serviced portfolio. National Student Clearinghouse (NCS) will provide weekly updates to NSLDS for all FFEL and DL loans in the FSA portfolio. NSLDS will provide the servicer with weekly enrollment data that include NSC updates.

Additional Requirements for Federally Held Portfolio

63. The servicer shall receive collateral in imaged and paper format and if received in paper format image it should be imaged in a format that can be ported easily to another system (Non-proprietary)
64. The servicer shall verify collateral for all loans received in a sale within 45 days and if any collateral is missing the missing collateral will be obtained from the seller.
65. The servicer shall provide for FSA access to the imaging and serving system to view images, make annotations on borrower accounts and have complete access to view FSA data.
66. The servicer shall provide a means for FSA to make a final determination on eligibility of borrowers for entitlements, such as discharge due to Closed School, Death, etc., and compromise offers.
67. The servicer shall report loans to NSLDS and credit bureaus.
68. The servicer shall cancel loans and make all financial adjustments when needed.
69. The servicer shall place loans, where the borrower has applied for bankruptcy, into a bankruptcy status, prepare a Proof-of-Claim and

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- provide any additional support needed to defend the loan against bankruptcy discharge.
70. The servicer shall accurately prepare and respond to control correspondence (correspondence sent to FSA from the White House, Congress, and other high government officials) and meet control turnaround times established by the U.S. Department for FSA.
 71. The servicer shall respond to written and email questions and requests timely and accurately.
 72. The servicer shall respond and resolve customer complaints; and create and execute a plan to escalate complaints to FSA and the Ombudsman.
 73. The servicer shall have the ability to provide borrower interest rate discounts and assess late fees if directed to do so by FSA.
 74. The servicer shall accurately and timely complete and return Loan Verification Certificates received from consolidating lenders.
 75. The servicer shall assign loans to DMCS for collection once they reach 360 days delinquent. If a loan is assigned in error the loan will be reinstated onto the servicer's system.
 76. The servicer shall have the ability to accept and service loans that undergo rehabilitation from the DMCS.
 77. The servicer shall provide FSA the ability to monitor phone calls remotely.
 78. The servicer shall support quarterly monitoring reviews completed by FSA.
 79. The servicer shall support annual program compliance reviews done by FSA, or by an agent of FSA.

Loan Conversion

[NO Additional Requirements beyond the Initial Requirements](#)

Records Management

80. The Servicer shall comply with all of the following standard items related to records management:
 - a. Citations to pertinent laws, codes and regulations such as 44 U.S.C chapters 21, 29, 31 and 33; Freedom of Information Act (5 U.S.C. 552); Privacy Act (5 U.S.C. 552a); 36 CFR Part 1222 and Part 1228.
 - b. Contractor shall treat all deliverables under the contract as the property of the U.S. Government for which the Government Agency shall have unlimited rights to use, dispose of, or disclose such data contained therein as it determines to be in the public interest.

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- c. Contractor shall not create or maintain any records that are not specifically tied to or authorized by the contract using Government IT equipment and/or Government records.
- d. Contractor shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.
- e. Contractor shall not create or maintain any records containing any Government Agency records that are not specifically tied to or authorized by the contract.
- f. The Government Agency owns the rights to all data/records produced as part of this contract.
- g. The Government Agency owns the rights to all electronic information (electronic data, electronic information systems, electronic databases, etc.) and all supporting documentation created as part of this contract. Contractor must deliver sufficient technical documentation with all data deliverables to permit the agency to use the data.
- h. Contractor agrees to comply with Federal and Agency records management policies, including those policies associated with the safeguarding of records covered by the Privacy Act of 1974. These policies include the preservation of all records created or received regardless of format [paper, electronic, etc.] or mode of transmission [e-mail, fax, etc.] or state of completion [draft, final, etc.].
- i. No disposition of documents will be allowed without the prior written consent of the Contracting Officer. The Agency and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. Records may not be removed from the legal custody of the Agency or destroyed without regard to the provisions of the agency records schedules.
- j. Contractor is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material and/or records generated under, or relating to, this contract. The Contractor (and any sub-contractor) is

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required to abide by Government and Agency guidance for protecting sensitive and proprietary information.

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Additional Information regarding records management:

Extract from 36 CFR Part 12, regarding records management responsibilities of contractors.

§1222.48 Data created or received and maintained for the Government by contractors.

(a) Contractors performing Congressionally mandated program functions are likely to create or receive data necessary to provide adequate and proper documentation of these programs and to manage them effectively. Agencies shall specify the delivery of the Government of all data needed for the adequate and proper documentation of contractor-operated programs in accordance with requirements of the Federal Acquisition Regulation (FAR) and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) When contracts involve the creation of data for the Government's use, in addition to specifying a final product, agency officials may need to specify the delivery of background data that may have reuse value to the Government. Before specifying the background data that contractors must deliver to the agency, program and contracting officials shall consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all agency and Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

(c) Deferred ordering and delivery-of-data clauses and rights-in-data clauses shall be included in contracts whenever necessary to ensure adequate and proper documentation or because the data have reuse value to the Government.

(d) When data deliverables include electronic records, the agency shall require the contractor to deliver sufficient technical documentation to permit the agency or other Government agencies to use the data.

(e) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation as codified at 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a), and shall be scheduled for disposition in accordance with 36 CFR part 1228.

36 CFR Part 1228, Subpart K - Facility Standards for Records Storage Facilities.

NARA requires that the requirements of Subpart K be incorporated into the contract requirements when records storage facilities are included in the contract. This covers direct contracts with commercial storage vendors such as Iron Mountain; it also covers contractors who store ED records as part of a larger service contract. <http://www.archives.gov/about/regulations/part-1228/k.html>

Attachment A-3

**Additional
Servicer
FULL
Requirements**

Full_Req_v6.0

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Additional Servicer – FULL Requirements

Required by 8/31/10 unless otherwise noted

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General Statement

It is the intent of the Department to procure a performance based contract(s) that promotes competition and provides best of business services. To achieve this goal, the Department expects each servicer to provide commercially available services that will yield high performing portfolios and high levels of customer satisfaction. The following statements apply:

- Servicers will be required to meet all statutory and legislative requirements.
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- Servicers may leverage all borrower repayment channels while maintaining existing branding provided all federally held loans are clearly distinguished and identified.
- Small differences due to rounding in various calculations are understood and accepted providing the calculation itself is in compliance with federal regulation.
- The department will allocate volume based on defined and understood performance metrics.
- The Department does not intend to provide additional service level requirements. The Department does, however, expect best of business practices to be deployed.
- The Department will not require the use of the Department or FSA logo on letters, web sites, etc.
- Servicers will have full discretion to promote or not promote services as long as they meet legislative and regulatory requirements and are cost neutral to the government.
- Servicers will have discretion to provide services to schools.
- Services may use their own authentication process as long as the process is fully compliant with federal IT security guidelines.
- With regard to split borrowers, it is acceptable for servicers to handle requests, phone calls, etc. for all loans being serviced, regardless of the holder as long as all federal laws and regulations are met.

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Direct Loans

1. The servicer shall meet all legislative and regulatory requirements for the Direct Loan program (DL). In some cases Direct Loans will need to be serviced differently than FFEL loans, a few examples of these differences are listed below (not an all inclusive list):
 - a. The interest rate for a Federal Direct PLUS loan is fixed at 7.9% for loans first disbursed after July 1, 2006.
 - b. Public service loan forgiveness is only offered in the DL.
 - c. There are two repayment plans unique to the DL: Income Contingent Repayment (ICR) and the Alternative Repayment.
 - d. DL provides a 0.25% interest rate reduction for borrowers making payments through electronic debit accounts.
 - e. As of July 1, 2009 the up front interest rebate for direct subsidized and unsubsidized loans will be 1.00%.
 - f. There is an origination fee but no Federal default fee in the DL. As of July 1, 2009, the origination fee will be 1.5% for direct subsidized and direct unsubsidized loans.
 - g. There is authority in the DL for unlimited discretionary forbearances. DL servicers must be able to offer borrowers additional administrative forbearance after the 3-year limit and upon receipt of additional documentation from the borrowers.
2. The servicer shall meet all previously identified requirements for Federally Held Debt (i.e. Accounting, Treasury, Reconciliation, Internal Controls, etc.) for the Direct Loan portfolio.
3. The servicer shall interface with Common Origination and Disbursement System (COD) & Electronic Master Promissory Note (eMPN) for newly originated loans.
4. The servicer shall interface with the Direct Loan Consolidation System (DLCS) for Direct Consolidation Loans.
5. The servicers shall accept loan and disbursement level adjustments from the originating system(s) and/or directly from schools as necessary. The majority of Direct Loan adjustments & cancellations are passed from the school to COD, and then from COD to the servicing system via the servicing system/COD interface. Direct Consolidation Loan adjustments & cancellations are received by the servicing system from the Direct Loan Consolidation System (DLCS) via the servicing system/DLCS interface
6. The servicer shall interface with Internal Revenue Service (IRS) as needed to support income contingent or income based programs.
7. The servicer shall support servicing of all Direct Loans, including Direct Consolidation Loans.

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Ongoing Allocation Methodology

The allocation of ongoing volume will be determined based on the performance of each servicer in relation to the other servicers awarded. While the total number of awarded servicers has not yet been determined, this methodology works with any number of servicers (as shown in examples).

Quarterly scores will be compiled for each servicer based on various performance factors; five high-level metrics, and some sub-metric categories, have been defined (see below). An average of the quarterly scores available on July 1 of each year will be used to determine the ranking of each servicer in each of the five high-level metric categories. By combining each servicer's ranking in all categories, each servicer will be given a percentage of the total new volume of Federally Held Debt to be distributed for the upcoming year.

Servicers will be informed of their allocation percentage of new volume by July 15 of each year. This allocation will become effective on August 15 of each year. The first ongoing allocation will be provided by August 15, 2010.

The allocation of ongoing volume will be determined based on the following factors:

1. Percentage of "In Repayment" Portfolio Dollars that go into default (as transferred to DMCS – 360+ days) – Measured as a percentage of the servicer's current Federally held portfolio
 - a. Percentage at Public Schools
 - b. Percentage at Private Schools
 - c. Percentage at Proprietary Schools
2. Percentage of unique "In Repayment" Portfolio borrowers that go into default (as transferred to DMCS – 360+ days) – Measured as a percentage of the servicer's current Federally held portfolio
 - a. Percentage at Public Schools
 - b. Percentage at Private Schools
 - c. Percentage at Proprietary Schools
3. Borrower Surveys
 - a. In School Borrowers
 - b. In Grace Borrowers
 - c. In Repayment Borrowers
4. School Surveys
 - a. Public Schools
 - b. Private Schools
 - c. Proprietary Schools
5. Survey of FSA personnel

Allocation Metric # 1 – to be measured Quarterly (calendar quarters beginning with October 1, 2009). Calculation = (Total Principal Balance Outstanding (or "PBO") + Interest of all loans sent to DMCS during the quarter or > 360 days delinquent at the end of the quarter) DIVIDED BY (Total PBO + Interest of all of the servicer's Federally held debt portfolio in repayment status). Resulting value is a percentage rounded to the nearest hundredth for each category of schools (Public, Private, Proprietary). All available quarterly scores in each category (1a, 1b, 1c) will be averaged together on July 1 of each year to calculate the Final Score for this allocation metric.

Allocation Metric # 2 – to be measured Quarterly (calendar quarters beginning with October 1, 2009). Calculation = (Total number of borrowers sent to DMCS during the quarter or > 360 days delinquent at

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the end of the quarter) DIVIDED BY (Total number of borrowers within the servicer's Federally held debt portfolio in repayment status). Resulting value is a percentage rounded to the nearest hundredth for each category of schools (Public, Private, Proprietary). All available quarterly scores in each category (2a, 2b, 2c) will be averaged together on July 1 of each year to calculate the Final Score for this allocation metric.

Allocation Metric # 3 – Surveys will be conducted quarterly of borrowers in each category (In School, In Grace, and In Repayment). The survey will measure borrower satisfaction with the servicer and results will be based on a scale of 0 – 100%, with 100% representing a perfect score. FSA, or an agent of FSA will conduct surveys. All available quarterly scores in each category (3a, 3b, 3c) will be averaged together on July 1 of each year to calculate the Final Score for this allocation metric.

Allocation Metric # 4 – Surveys will be conducted quarterly of schools in each category (Public, Private, and Proprietary). The survey will measure school satisfaction with the servicer and results will be based on a scale of 0 – 100%, with 100% representing a perfect score. FSA, or an agent of FSA will conduct surveys. All available quarterly scores in each category (4a, 4b, 4c) will be averaged together on July 1 of each year to calculate the Final Score for this allocation metric.

Allocation Metric # 5 – Surveys will be conducted quarterly of FSA personnel. The survey will measure FSA satisfaction with the servicer and results will be based on a scale of 0 – 100%, with 100% representing a perfect score. FSA, or an agent of FSA will conduct surveys. All available quarterly scores will be averaged together on July 1 of each year to calculate the Final Score for this allocation metric.

Allocation Metric Score Comparison Among Servicers

The above calculation will result in a set of 5 scores for each servicer, one score in each metric category (1-Defaulted borrower dollars, 2-Defaulted borrower count, 3-Borrower Survey, 4-School Survey, 5-FSA Survey).

FSA will compare all servicers' scores in each allocation metric category and provide a ranking for each servicer in that category, with the best score in each category receiving the highest possible value and the worst score receiving the lowest possible value (highest / lowest values will be determined by the number of servicers selected --- Highest score possible will be the total number of servicers selected, lowest score will be 1).

Once a ranking value has been assigned to each servicer in each allocation category, all scores for a servicer will be added together to provide the "Total Score" for that servicer for the year. Each servicer will have one Total Score for each year.

Allocation of New Volume of Federally Held Debt

Each servicer will be assigned an allocation of new volume by dividing that servicer's total score by the combined total scores of all servicers. The resulting percentage will determine each servicer's percentage of new volume of Federally Held Debt.

The servicer's percentage of new volume will determine the percentage of new borrowers that will be sent to the servicer for servicing (loans for existing borrowers may, to the maximum extent practicable, be sent to the servicer already holding that borrower's other loans).

NOTE: If a servicer is out of compliance (for example, but not limited to, financial management or reporting, security, OMB Circular A-123, Legislative Mandates, Program Compliance, etc.), that

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servicer's new volume may be re-allocated to one or more other servicers until compliance has been achieved. In addition, that servicer's current account volume may be transferred to another servicer, at the non-compliant servicer's expense.

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION**Scenario 1 - 6 Servicers selected****FINAL SCORE BY ALLOCATION METRIC**

METRIC		Servicers					
		1	2	3	4	5	6
1	Defaulted borrower count	1.10%	2.20%	3.30%	4.40%	5.50%	6.60%
2	Defaulted borrower amount	1.10%	2.20%	3.30%	4.40%	5.50%	6.60%
3	Borrower Survey	97.00%	95.00%	93.00%	91.00%	90.00%	89.00%
4	School Survey	97.00%	95.00%	93.00%	91.00%	90.00%	89.00%
5	FSA Survey	97.00%	95.00%	93.00%	91.00%	90.00%	89.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers					
		1	2	3	4	5	6
1	Defaulted borrower count	6.0	5.0	4.0	3.0	2.0	1.0
2	Defaulted borrower amount	6.0	5.0	4.0	3.0	2.0	1.0
3	Borrower Survey	6.0	5.0	4.0	3.0	2.0	1.0
4	School Survey	6.0	5.0	4.0	3.0	2.0	1.0
5	FSA Survey	6.0	5.0	4.0	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

	Servicers					
	1	2	3	4	5	6
TOTAL SCORE	30.0	25.0	20.0	15.0	10.0	5.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	30.0	28.57%	1,714,286
Servicer 2	25.0	23.81%	1,428,571
Servicer 3	20.0	19.05%	1,142,857
Servicer 4	15.0	14.29%	857,143
Servicer 5	10.0	9.52%	571,429
Servicer 6	5.0	4.76%	285,714
Combined Total	105	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 2 - 5 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers				
		1	2	3	4	5
1	Defaulted borrower count	1.10%	2.20%	3.30%	4.40%	5.50%
2	Defaulted borrower amount	1.10%	2.20%	3.30%	4.40%	5.50%
3	Borrower Survey	97.00%	95.00%	93.00%	91.00%	90.00%
4	School Survey	97.00%	95.00%	93.00%	91.00%	90.00%
5	FSA Survey	97.00%	95.00%	93.00%	91.00%	90.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers				
		1	2	3	4	5
1	Defaulted borrower count	5.0	4.0	3.0	2.0	1.0
2	Defaulted borrower amount	5.0	4.0	3.0	2.0	1.0
3	Borrower Survey	5.0	4.0	3.0	2.0	1.0
4	School Survey	5.0	4.0	3.0	2.0	1.0
5	FSA Survey	5.0	4.0	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

TOTAL SCORE	Servicers				
	1	2	3	4	5
	25.0	20.0	15.0	10.0	5.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	25.0	33.33%	2,000,000
Servicer 2	20.0	26.67%	1,600,000
Servicer 3	15.0	20.00%	1,200,000
Servicer 4	10.0	13.33%	800,000
Servicer 5	5.0	6.67%	400,000
Combined Totals	75	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 3 - 4 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers			
		1	2	3	4
1	Defaulted borrower count	1.10%	2.20%	3.30%	4.40%
2	Defaulted borrower amount	1.10%	2.20%	3.30%	4.40%
3	Borrower Survey	97.00%	95.00%	93.00%	91.00%
4	School Survey	97.00%	95.00%	93.00%	91.00%
5	FSA Survey	97.00%	95.00%	93.00%	91.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers			
		1	2	3	4
1	Defaulted borrower count	4.0	3.0	2.0	1.0
2	Defaulted borrower amount	4.0	3.0	2.0	1.0
3	Borrower Survey	4.0	3.0	2.0	1.0
4	School Survey	4.0	3.0	2.0	1.0
5	FSA Survey	4.0	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

TOTAL SCORE	Servicers			
	1	2	3	4
	20.0	15.0	10.0	5.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	20.0	40.00%	2,400,000
Servicer 2	15.0	30.00%	1,800,000
Servicer 3	10.0	20.00%	1,200,000
Servicer 4	5.0	10.00%	600,000
Combined Totals	50	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 4 - 3 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers		
		1	2	3
1	Defaulted borrower count	1.10%	2.20%	3.30%
2	Defaulted borrower amount	1.10%	2.20%	3.30%
3	Borrower Survey	97.00%	95.00%	93.00%
4	School Survey	97.00%	95.00%	93.00%
5	FSA Survey	97.00%	95.00%	93.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers		
		1	2	3
1	Defaulted borrower count	3.0	2.0	1.0
2	Defaulted borrower amount	3.0	2.0	1.0
3	Borrower Survey	3.0	2.0	1.0
4	School Survey	3.0	2.0	1.0
5	FSA Survey	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

	Servicers		
	1	2	3
TOTAL SCORE	15.0	10.0	5.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	15.0	50.00%	3,000,000
Servicer 2	10.0	33.33%	2,000,000
Servicer 3	5.0	16.67%	1,000,000
Combined Totals	30	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 5 - 2 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers	
		1	2
1	Defaulted borrower count	1.10%	2.20%
2	Defaulted borrower amount	1.10%	2.20%
3	Borrower Survey	97.00%	95.00%
4	School Survey	97.00%	95.00%
5	FSA Survey	97.00%	95.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers	
		1	2
1	Defaulted borrower count	2.0	1.0
2	Defaulted borrower amount	2.0	1.0
3	Borrower Survey	2.0	1.0
4	School Survey	2.0	1.0
5	FSA Survey	2.0	1.0

TOTAL SCORE BY SERVICER

	Servicers	
	1	2
TOTAL SCORE	10.0	5.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	10.0	66.67%	4,000,000
Servicer 2	5.0	33.33%	2,000,000
Combined Totals	15	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 6 - 6 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers					
		1	2	3	4	5	6
1	Defaulted borrower count	1.10%	2.20%	3.30%	4.40%	5.50%	6.60%
2	Defaulted borrower amount	6.60%	5.50%	3.30%	4.40%	2.20%	1.10%
3	Borrower Survey	97.00%	95.00%	93.00%	91.00%	90.00%	89.00%
4	School Survey	89.00%	90.00%	93.00%	91.00%	95.00%	97.00%
5	FSA Survey	97.00%	95.00%	93.00%	91.00%	90.00%	89.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers					
		1	2	3	4	5	6
1	Defaulted borrower count	6.0	5.0	4.0	3.0	2.0	1.0
2	Defaulted borrower amount	1.0	2.0	4.0	3.0	5.0	6.0
3	Borrower Survey	6.0	5.0	4.0	3.0	2.0	1.0
4	School Survey	1.0	2.0	4.0	3.0	5.0	6.0
5	FSA Survey	6.0	5.0	4.0	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

	Servicers					
	1	2	3	4	5	6
TOTAL SCORE	20.0	19.0	20.0	15.0	16.0	15.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borrh)
Servicer 1	20.0	19.05%	1,142,857
Servicer 2	19.0	18.10%	1,085,714
Servicer 3	20.0	19.05%	1,142,857
Servicer 4	15.0	14.29%	857,143
Servicer 5	16.0	15.24%	914,286
Servicer 6	15.0	14.29%	857,143
Combined Total	105	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 7 - 5 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers				
		1	2	3	4	5
1	Defaulted borrower count	1.10%	2.20%	3.30%	4.40%	5.50%
2	Defaulted borrower amount	6.60%	5.50%	3.30%	4.40%	2.20%
3	Borrower Survey	97.00%	95.00%	93.00%	91.00%	90.00%
4	School Survey	89.00%	90.00%	93.00%	91.00%	95.00%
5	FSA Survey	97.00%	95.00%	93.00%	91.00%	90.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers				
		1	2	3	4	5
1	Defaulted borrower count	5.0	4.0	3.0	2.0	1.0
2	Defaulted borrower amount	1.0	2.0	4.0	3.0	5.0
3	Borrower Survey	5.0	4.0	3.0	2.0	1.0
4	School Survey	1.0	2.0	4.0	3.0	5.0
5	FSA Survey	5.0	4.0	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

	Servicers				
	1	2	3	4	5
TOTAL SCORE	17.0	16.0	17.0	12.0	13.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	17.0	22.67%	1,360,000
Servicer 2	16.0	21.33%	1,280,000
Servicer 3	17.0	22.67%	1,360,000
Servicer 4	12.0	16.00%	960,000
Servicer 5	13.0	17.33%	1,040,000
Combined Total	75	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 8 - 4 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers			
		1	2	3	4
1	Defaulted borrower count	1.10%	2.20%	3.30%	4.40%
2	Defaulted borrower amount	6.60%	5.50%	3.30%	4.40%
3	Borrower Survey	97.00%	95.00%	93.00%	91.00%
4	School Survey	89.00%	90.00%	93.00%	91.00%
5	FSA Survey	97.00%	95.00%	93.00%	91.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers			
		1	2	3	4
1	Defaulted borrower count	4.0	3.0	2.0	1.0
2	Defaulted borrower amount	1.0	2.0	4.0	3.0
3	Borrower Survey	4.0	3.0	2.0	1.0
4	School Survey	1.0	2.0	4.0	3.0
5	FSA Survey	4.0	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

TOTAL SCORE	Servicers			
	1	2	3	4
	14.0	13.0	14.0	9.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borrh)
Servicer 1	14.0	28.00%	1,680,000
Servicer 2	13.0	26.00%	1,560,000
Servicer 3	14.0	28.00%	1,680,000
Servicer 4	9.0	18.00%	1,080,000
Combined Total	50	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 9 - 3 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers		
		1	2	3
1	Defaulted borrower count	1.10%	2.20%	3.30%
2	Defaulted borrower amount	6.60%	5.50%	3.30%
3	Borrower Survey	97.00%	95.00%	93.00%
4	School Survey	89.00%	90.00%	93.00%
5	FSA Survey	97.00%	95.00%	93.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers		
		1	2	3
1	Defaulted borrower count	3.0	2.0	1.0
2	Defaulted borrower amount	1.0	2.0	3.0
3	Borrower Survey	3.0	2.0	1.0
4	School Survey	1.0	2.0	3.0
5	FSA Survey	3.0	2.0	1.0

TOTAL SCORE BY SERVICER

TOTAL SCORE	Servicers		
	1	2	3
	11.0	10.0	9.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	11.0	36.67%	2,200,000
Servicer 2	10.0	33.33%	2,000,000
Servicer 3	9.0	30.00%	1,800,000
Combined Total	30	100.00%	6,000,000

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SAMPLE - ONGOING ALLOCATION METRIC CALCULATION

Scenario 10 - 2 Servicers selected

FINAL SCORE BY ALLOCATION METRIC

METRIC		Servicers	
		1	2
1	Defaulted borrower count	1.10%	2.20%
2	Defaulted borrower amount	6.60%	5.50%
3	Borrower Survey	97.00%	95.00%
4	School Survey	89.00%	90.00%
5	FSA Survey	97.00%	95.00%

SERVICER RANKING BY ALLOCATION METRIC

METRIC		Servicers	
		1	2
1	Defaulted borrower count	2.0	1.0
2	Defaulted borrower amount	1.0	2.0
3	Borrower Survey	2.0	1.0
4	School Survey	1.0	2.0
5	FSA Survey	2.0	1.0

TOTAL SCORE BY SERVICER

	Servicers	
	1	2
TOTAL SCORE	8.0	7.0

ALLOCATION EACH SERIVER WILL RECEIVE

	Total Score	% of new volume Servicer will receive (Total Score / Combined Totals)	New borrowers (based on 6M total new borr)
Servicer 1	8.0	53.33%	3,200,000
Servicer 2	7.0	46.67%	2,800,000
Combined Total	15	100.00%	6,000,000

Deliverable	Definition
Borrowers in In-school Status	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have not separated from school as of the last day of the billing period
Borrowers in Grace or Current Repayment Status	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have separated from school and are less than 31 days delinquent and are not in deferment, forbearance, or conditionally discharged as of the last day of the billing period
Borrowers in Deferment or Forbearance	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have separated from school, are in deferment or forbearance and who are not conditionally discharged as of the last day of the billing period
Borrowers 31-90 Days Delinquent	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have separated from school, are 31 or more days, but less than 91 days delinquent, and who are not conditionally discharged as of the last day of the billing period
Borrowers 91-150 Days Delinquent	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have separated from school, are 91 or more days, but less than 151 days delinquent, and who are not conditionally discharged as of the last day of the billing period
Borrowers 151-270 Days Delinquent	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have separated from school are 151 or more days, but less than 271 days delinquent, and who are not conditionally discharged as of the last day of the billing period
Borrowers 270+ Days Delinquent	Number of unique borrowers (SSNs) with balance not equal to \$0.00 who have separated from school and 271 or more days and who are not conditionally discharged as of the last day of the billing period. This may include borrowers over 360 day that are considered in Default Status, but for some reason have not been transferred through no fault of the Servicer.

NOTES:

1. Common pricing shall apply regardless of program (i.e. Direct Loan, Federal Family Education Loan) or volume serviced, unless otherwise noted in the contract.
2. Reporting is required for the number of borrowers and/or loans and dollar amount of each program, in addition to any other reporting requirements provided in the contract.
3. Borrowers in multiple statuses shall be billed once, in the lowest performing deliverable status. The lowest performing deliverable status is defined as the lowest unit priced deliverable.
4. Borrowers pending discharge, which include, but are not limited to: conditional disability, death, or bankruptcy, shall be, for billing purposes, counted in the deliverable status at the time of the discharge request.
5. "The last day of the billing period" is defined as the last day of the Department of Education's monthly billing period.
6. The annual pricing period shall begin on September 1, 2009.

USE AND NON-DISCLOSURE AGREEMENT

The undersigned, [REDACTED], an authorized representative of the Pennsylvania Higher Education Assistance Agency, (which is hereinafter referred to as the "Recipient") requests the Government to provide the Recipient with proprietary data, technical data or computer software (hereinafter referred to as "Data") in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

- (1) The Recipient shall —
 - (a) Use, modify, reproduce, release, perform, display, or disclose Data marked with SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the "Contractor"), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.
 - (b) Use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor.
 - (c) Use computer software marked with restricted rights legends only in performance of Contract Number EDOFSA-09-D-0014. The Recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend.
 - (d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See (a)(2) of the Use and Non-Disclosure Agreement clause. Omit if none of the Data requested is marked with special license rights legends).

- (2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.
- (3) The Recipient agrees to accept these Data "as is" without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.
- (4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.
- (5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.
- (6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.
- (7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.
- (8) This Agreement shall be effective for the period commencing with the Recipient's execution of this Agreement and ending upon August 31, 2019. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Pennsylvania Higher Education Assistance Agency

Recipient's Business Name

[REDACTED]

Authorized Representative

Date

[REDACTED]

Representative's Typed Name and Title

Exhibit C

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

AMANDA LOVE and WINGO SMITH,
Individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY d/b/a FEDLOANS
SERVICING, INC.,

Defendant.

Case No. 19EV002000

NOTICE OF FILING OF NOTICE OF REMOVAL

TO: THE CLERK OF THE STATE COURT OF FULTON COUNTY
FOR FULTON COUNTY, GEORGIA

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, defendant Pennsylvania Higher Education Assistance Agency d/b/a FedLoans Servicing, Inc. (“PHEAA”) hereby gives written notice to the State Court of Fulton County, Georgia, and to plaintiffs Amanda Love and Wingo Smith, that Removing Defendant has filed a Notice of Removal in the United States District Court for the Northern District of Georgia, and that this case has been removed to that Court. Pursuant to 28 U.S.C. § 1441, no further proceedings may be had in this Court unless and until the case is remanded. Attached as “Exhibit A” hereto is a copy of the Notice of Removal, without its exhibits.

DATED: May 24, 2019

Respectfully submitted,

/s/ Sarah T. Reise
Sarah T. Reise (GA Bar # 181567)

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999 Peachtree Street, Suite 1000
Atlanta, GA 30309
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Facsimile: (678) 420-9301

*Attorney for Defendant, Pennsylvania Higher
Education Assistance Agency*

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Students Seeking Public Service Loan Forgiveness Sue PHEAA Over 'Negligent' Servicing Practices](#)
