DEPARTMENT OF EDUCATION

DEPARTMENT OF THE TREASURY

OFFICE OF MANAGEMENT AND BUDGET

Federal Family Education Loan Program (FFELP)

AGENCY: Department of Education, Department of the Treasury, Office of Management and Budget.

ACTION: Notice of terms and conditions of purchase of loans under the Ensuring Continued Access to Student Loans Act of 2008.

SUMMARY: Under section 459A of the Higher Education Act of 1965, as amended (''HEA''), as enacted within the Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. 110–227), the Department of Education (''Department'') has the authority to purchase, or enter into forward commitments to purchase, Federal Family Education Loan Program (''FFELP'') loans made under sections 428 (subsidized Stafford loans), 428B (PLUS loans), or 428H (unsubsidized Stafford loans) of the HEA, on such terms as the Secretary of Education (''Secretary''), the Secretary of the Treasury, and the Director of the Office of Management and Budget (collectively, ''Secretaries and Director'') jointly determine are ''in the best interest of the United States'' and ''shall not result in any net cost to the Federal Government (including the cost of servicing the loans purchased).''

This notice (a) establishes the terms and conditions that will govern the loan purchases made under section 459A of the HEA, (b) outlines the methodology and factors that have been considered in evaluating the price at which the Department will purchase loans made under section 428, 428B, or 428H of the HEA, and (c) describes how the use of those factors and methodology will ensure that the loan purchases do not result in any net cost to the Federal Government. The Secretaries and Director concur in the publication of this notice and have jointly determined that the programs described in this notice are in the best interest of the United States and shall not result in any net cost to the Federal Government (including the cost of servicing the loans purchased).

DATES: *Effective Date:* The terms and conditions governing the Loan Purchase Commitment Program and the terms and conditions governing the Loan Participation Purchase Program are effective July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Kristie Hansen, U.S. Department of Education, Office of Federal Student Aid, Union Center Plaza, 830 First Street, NE., Room 113F1, Washington, DC 20202. Telephone: (202) 377–3309 or by *e-mail: Kristie.Hansen@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Introduction

The purchasing of loans is intended to encourage eligible FFELP lenders to provide students and parents access to Stafford and PLUS loans for the 2008–2009 academic year. To accomplish this objective, the Department is offering lenders the opportunity to participate in a Loan Purchase Commitment Program (''Purchase Program'') and a Loan Participation Purchase Program (''Participation Program'') (collectively, ''Programs'').

Under the Loan Purchase Commitment Program, the Department may purchase eligible loans that are held by eligible lenders. To participate in the Purchase Program, each eligible lender must enter into a Master Loan Sale Agreement with the Department and deliver to the Department or its agent the fully executed master promissory note (or all electronic records evidencing the same) evidencing each eligible loan that the eligible lender wishes to sell to the Department and any and all other documents and computerized records relating to such eligible loans.

Under the Loan Participation Purchase Program, the Department may purchase participation interests in eligible loans that are held by an eligible lender acting as a sponsor under a Master Participation Agreement. To participate in the Participation Program, each sponsor must enter into a Master Participation Agreement with the

Department and a third-party custodian acceptable to the Department and must have provided appropriate notice to the Department of the intent to participate in the Loan Purchase Commitment Program.[1]

Terms and Conditions

Pursuant to section 459A of the HEA, the Secretaries and Director establish the terms and conditions that will govern the Loan Purchase Commitment Program (''Loan Purchase Commitment Program Terms and Conditions,'' attached as Appendix B to this notice) and the terms and conditions that will govern the Loan Participation Purchase Program (''Loan Participation Purchase Program Terms and Conditions,'' attached as Appendix C to this notice). The Loan Purchase Commitment Program Terms and Conditions and the Loan Participation Purchase Program Terms and Conditions are collectively referred to as the ''Terms and Conditions.'' (The Notice of Intent to Participate, referenced in the Terms and Conditions, is attached as Appendix D to this notice.)

Outline of Methodology and Factors in Determining Prices

In accordance with Public Law 110–227, the goal in structuring the Purchase Program and the Participation Program described in this notice is to maximize student loan availability while ensuring loan purchases result in no net costs to the Federal Government. These programs will offer temporary liquidity to FFELP lenders at prices that will encourage their continued participation in the FFELP. This notice responds, in particular, to the requirement in section 459A of the HEA for an outline of the methodology and factors considered in evaluating the price at which loans may be purchased, and describes how the use of such methodology and consideration of such factors will ensure that no net cost to the Federal Government results from the loan purchases under these programs.

Servicing and Financing Costs. In determining the prices described in this notice, the Secretary and the Secretary of the Treasury analyzed the costs incurred in making FFELP loans by large and small lenders, for-profit and not-for-profit lenders, and national and regional lenders based on publicly available data and consultations with a number of lenders and financial market analysts. This analysis examined lender returns in the context of loan servicing and financing expenses associated with obtaining funding to pay program costs and finance actual loan disbursements.

- The rate of lender returns on FFELP loans in the in-school and grace periods are effectively set by section 438 of the HEA at the commercial paper (CP) rate plus 1.19 percent or CP plus 119 basis points for for-profit lenders (a basis point equals one one-hundredth of a percent). 20 U.S.C. 1087–1(b)(2)(I)(ii) and (b)(2)(I)(vi)(I)(bb). For eligible not-for-profit holders, the HEA provides a return of CP plus 134 basis points. 20 U.S.C. 1087–1(b)(2)(I)(ii) and (b)(2)(I)(vi)(II)(bb). (These return levels reflect the net of borrower interest payments and Federal interest subsidies.) Returns are different for PLUS loans, which make up a relatively small portion of overall FFELP volume. These PLUS return levels were reflected in the cost neutrality calculations but, for simplicity, are not detailed in this notice.
- Lenders reported that loan servicing costs generally average between 30 basis points and 60 basis points per dollar loaned, with larger, more efficient lenders typically averaging closer to 30 basis points and small or not-for-profit lenders averaging closer to 60 basis points. Lenders pay the Department a 1 percent fee on each loan they make. 20 U.S.C. 1087–1(d)(2)(B). In addition, lenders must repay excess interest payments as required by section 438 of the HEA. 20 U.S.C. 1087–1(b)(2)(v). Because the student borrowers of most loans subject to the Purchase Program and the Participation Program will be in school and not making payments on their loans during the 2008–2009 academic year, lenders may need to obtain funding to make these statutorily-required payments to the Department. Financing costs (*i.e.*, interest expenses incurred to obtain capital from deposits or from private capital markets) typically total 15 basis points for every dollar loaned.
- Subtracting estimated servicing and financing costs from the lender return levels established in the HEA leaves lenders with estimated pre-tax returns of CP plus 44–74 basis points for for-profit lenders and CP plus 59–89 basis points for lenders that are eligible not-for-profit holders. Lenders finance loan disbursements from these returns. If lenders sell participation interests in their loans under the Participation Program, they are charged CP plus 50 basis points, leaving a net pre-tax return of −6 basis points to 24 basis points for for-profit lenders. If lenders can obtain private financing at a lower interest rate, their net pre-tax return would be higher.

Based on this background information, the Secretaries and Director determined that setting the price paid by lenders on a participation interest in a loan at the principal of that loan and the commercial paper rate plus 50 basis points would offer most lenders sufficient opportunity to continue their participation in the FFELP. Setting a higher price risks limiting participation to only the largest lenders, while offering a lower price would be overly generous, especially for those same large lenders.

Origination and Deconversion Costs. In addition to servicing and financing costs, lenders incur administrative costs to originate loans and remove or ''deconvert'' loans from their servicing systems. In determining the proper price to reimburse lenders for these costs, the Department and the Department of the Treasury analyzed information from lenders and servicers.

The Department and the Department of the Treasury consulted with lenders, who provided them with their estimated origination and deconversion costs. Larger, more efficient lenders indicated that their origination costs ranged between $20–$30 per loan while these costs for smaller lenders were $75 per loan. Lenders indicated that their estimated deconversion costs (*i.e.* the costs resulting from the process of taking a loan from one lender's servicing system and transferring it to another servicing system) ranged from $20–$50 per loan.

To ensure the Participation Program is open to more than just the largest lenders, the Secretaries and Director used these estimates to establish a flat $75 fee paid on each loan sold to the Department to cover all servicing, origination, and deconversion costs. This assumes the lower end of the origination cost range and the higher end of the deconversion costs range.

Pricing structures on many private servicing contracts tend to have costs that differ greatly for different services, with high origination costs and relatively low deconversion costs, or at times, the converse. Notwithstanding these differences, the Secretaries and Director are reasonably certain that the $75 fee accounts for these variations

[1] Lenders that qualify as ''eligible not-for-profit holders'' for a higher special allowance rate may sell participation interests in their loans under this program without loss of eligibility for that rate. An entity qualifies for that rate only if the entity is the ''sole beneficial owner of such loan.'' 20 U.S.C. 1085(p)(2)(C). Courts treat a participation interest in a loan as a beneficial ownership of a loan. The Department becomes a beneficial owner of a loan in which it purchases a participation interest, and the lender then holds a junior beneficial ownership interest. In light of other statutory provisions and the congressional intent they evidence, the Department interprets the HEA to disqualify an otherwise-eligible not-for-profit holder only if a for-profit entity acquires beneficial ownership of a loan. See 20 U.S.C. 1085(p)(2)(B), (E), (3).

while ensuring adequate participation in the Participation Program.

Analysis of Cost Neutrality

The cost-neutrality analysis used credit subsidy cost estimation procedures established under the Federal Credit Reform Act of 1990 (Pub. L. 101–508) and OMB Circular A–11. These procedures entail performing various analyses, projecting cash flows to and from the Government, and discounting those cash flows to the point of disbursement; the analysis also used the Credit Subsidy Calculator (''OMB calculator''), developed by the Office of Management and Budget to estimate credit subsidy costs for all Federal credit programs, as the discounting tool.[2] The results of the analysis were subsidy rates that reflect the Federal costs associated with a loan; these costs are expressed as a percentage of the credit extended by the loan. For example, a subsidy rate of 10.0 percent indicates a Federal cost of $10 on a $100 loan.

The metric to determine cost neutrality was that costs under the new Programs should not exceed costs expected under the FFELP had the loan purchase authority in section 459A of the HEA not been enacted. Thus all costs were compared to estimates in the 2009 President's Budget for the FFELP, after adjustments were made for enacted legislation (other than the loan purchase authority provided by Pub. L. 110–227), including administrative costs.

Student loan cost estimates were developed to assess the Federal cost incurred for loans financed for students in five categories: Students attending proprietary schools, students attending two-year schools, freshmen/sophomores at four-year schools, juniors/seniors at four-year schools, and students in graduate programs. Risk categories have separate assumptions based on historical patterns—for example, the likelihood of default or the likelihood of statutory deferments or discharge benefits—of borrowers in each category. The analysis also considered risk factors that are particular to the new programs, such as the likelihood that lenders involved in loan participation agreements file for bankruptcy protection.

This discussion outlines the analysis of the new Purchase Program and Participation Program with respect to the following critical aspects affecting the Federal cost:

- Administrative costs;
- Borrower behavior;
- Lender behavior; and
- Various risk factors.

Administrative Costs. Under the Federal Credit Reform Act, Federal administrative costs are not included in credit subsidy cost calculations. However, to capture the full cost of the Purchase Program and Participation Program, section 459A of the HEA requires the determination of cost neutrality to include total costs, including Federal administrative costs that are subject to appropriation, and thus administrative costs were estimated and included in the cost-neutrality analysis. Administrative cash flows primarily involve servicing costs associated with loans purchased by the Department. These costs extend for up to 40 years, because servicing must continue until the last loan is paid in full. Administrative costs also include start-up costs to enhance the Department's systems to accommodate the purchase of participation interests and any put FFELP loans. Other start-up costs include legal and technical advisory contracts and changes to Department accounting, reporting, and program compliance systems and processes.

For the new programs, the Secretaries and Director estimated that start-up costs would be $15.7 million and servicing costs would vary, according to the amount of volume in the program. Estimates for start-up costs were derived from conversations with the Department's existing service contract providers, while servicing cost estimates were derived from costs currently incurred with the Department's Federal Direct Loan servicing contract.

Borrower Behavior. Given the base FFELP serves as the foundation of the new programs, and the characteristics of the base program are unchanged, there is no reason to believe that the Purchase Program and Participation Program outlined in this notice will affect borrower behavior. Thus, this cost analysis uses the same borrower behavior assumptions as were used in preparing the 2009 President's Budget to gauge the effect on program costs of borrower-based activities such as loan repayment, use of statutory benefits such as deferments and loan discharges, and default rates and timing. These assumptions are based on a wide range of data sources, including the National Student Loan Data System, the Department's operational and financial systems, and a group of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey.

Lender Behavior. A key factor in assessing whether the Purchase Program and Participation Program would operate in a cost-neutral manner was lender behavior: Specifically, how many lenders would participate in each program and how many loans would they eventually choose to sell to the Department. The Secretaries and Director considered alternative scenarios of market conditions and lender behavior to determine whether each program could be considered cost-neutral.

In one scenario, the Secretaries and Director assumed that market conditions would not improve and that FFELP lenders would put or sell participation interests to the Department in 100 percent of all FFELP loans made for the 2008–09 academic year. At the end of the participation period, FFELP lenders would also put 50 percent of those loans to the Department. The Secretaries and Director assumed that the loan volume would be $65 billion and that the total portfolio would be similar to the expected 2008–2009 school year of student loans under the FFELP before enactment of the loan purchase authority in Public Law 110–227.[3] Further, the loans purchased at the end of the participation period would be representative of the total loan volume. Under this scenario, we determined that costs for both the Purchase Program and the Participation Program were less expensive to the Government than for the baseline subsidy costs for FFELP loans costs for the FFELP baseline in this period. (Please see *Table 2*, located in Appendix A, for a summary of the analysis for this scenario, which also includes the risk factors discussed in this notice.)

The Secretaries and Director also considered other scenarios. In those scenarios, the Secretaries and Director sorted the expected FFELP volume under the Purchase Program and Participation Program into three

[2] The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with loans made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across various Federal credit programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal costs of credit programs.

[3] This loan volume assumption is the full FFELP non-consolidation estimate for the 2008–2009 academic year (as presented in the 2009 President's Budget) and is adjusted to include increases to unsubsidized Stafford Loan limits provided for in Pub. L. 110–227.

categories: Loans made by lenders and sold to the Department; loans made by lenders on which the lenders first sold participation interests to the Department and then, on September 30, 2009, sold the loans themselves to the Department; and loans made by lenders on which participation interests were sold to the Department but then redeemed by the lender, for a cash payment, eliminating the Department's participation interest. In general, the Secretaries and Director derived volume allocations under particular scenarios by making assumptions about near-term market conditions, likely lender behavior based on type of lending institution and operational capability, and projecting lender demand for any particular option under those conditions.

One of these scenarios, considered to be one of the most costly to the Government, would be that market conditions improve significantly over the next year, and that lenders sell a greater proportion of higher cost loans to the Government (in a process often termed ''cherry-picking''). A Congressional Budget Office analysis, and other analyses, of the FFELP portfolio have found that certain loans are more profitable for FFELP lenders than others. In particular, borrowers with small balances provide relatively little margin income relative to the fixed costs lenders face to service those loans. Some borrowers, including those that attended schools with higher than average default rates, are more likely to become delinquent and, consequently, present higher expected default costs, and greater losses of margin income due to default.

The Terms and Conditions seek to reduce the impact of these risk factors. For example, program guidelines requiring lenders to sell all 2008–09 Stafford loans held for a specific borrower, combined with the administrative complexity and expense of identifying and deconverting only less profitable loans, make it less likely that lenders will choose to sell only poorly-performing loans to the Department.

Nevertheless, if financial markets improve to the point where lenders can finance most loans privately, they might still sell those least profitable loans to the Department. In this situation, borrowers with very low balances will present relatively high servicing costs to the Department per dollar of outstanding balance.

Under the scenario described in the preceding paragraph, the analysis estimates 4 percent of FFELP volume ($65 billion in the 2008–2009 academic year) will be loans made by lenders and sold to the Department; 32 percent of volume ($21 billion) would be loans for which participation interests, and then the loans themselves, would be sold to the Department; and 32 percent ($21 billion) would be loans for which participation interests were sold, but then redeemed.[4] Cost estimates assuming these volume allocations and risk adjustments for this scenario still compared favorably with the costs for the base FFELP. (Please see *Table 3*, located in Appendix A, for a summary of the analysis for this scenario and the risk factors discussed in the following sections.)

It should also be noted that, in addition to the examples discussed herein that represent certain abnormal market and lender behavior conditions, all other alternatives under which the Purchase Program and Participation Program were analyzed were less expensive than base FFELP costs.

Risk Factors. Analyzing whether the Purchase Program and Participation Program would operate in a cost-neutral manner requires that projected costs account for the presence of various risks and cost factors that must be assumed since the programs will not operate entirely like the base FFELP, nor without operational risk. In addition to cherry-picking, the Secretaries' and Director's estimates included adjustments for four other factors: that lenders involved in loan participation agreements file for bankruptcy protection (''bankruptcy remoteness''); that lenders redeem their participation agreements early, reducing Federal earnings from the participation interests acquired (''interest adjustments''); that unforeseen problems undermine the Department's ability to effectively oversee and administer the Purchase Program and Participation Program (''operational risk''); and that some of the loans purchased by the Department would be those where the Department would otherwise reject a claim under the FFELP program (''claim rejects'').

The Terms and Conditions for each program seek to reduce the impact of these risk factors. None of these factors is likely to lead to significant additional Federal costs. For example, the requirement that lenders sell participation interests that total at least $50 million will limit involvement to large financial institutions that, in general, are financially stable and not likely to proceed to bankruptcy. Additionally, upon filing for bankruptcy, the yield owed by the lender to the Department increases from principal of that loan and the commercial paper rate plus 50 basis points, to principal of that loan and the commercial paper rate plus 300 basis points.

However, to ensure estimates reflect a conservative assessment of possible Federal costs, the Secretaries and Director added cost adjustments to incorporate each risk factor in all of the scenarios noted in the preceding paragraphs. The adjustments were based on an assessment of private-sector behavior and program data as follows:

• *Bankruptcy remoteness.* The Government might face legal risks if a lender declares bankruptcy while holding rights to loans under the participation agreement. The Secretaries and Director believe that the structure to be utilized under the Participation Program offers sufficient bankruptcy protection, in that legal title of these participated loans will be placed in a custodial facility, and that the participation agreement vests the Government with a valid security interest under the Uniform Commercial Code. Nonetheless, a bankruptcy court might tie up control of the loans until the claims of other creditors are settled. This risk is more present if markets remain distressed during the next one to two years as the likelihood of bankruptcy is higher; however, the risk never goes to zero entirely. For the scenario in Table 2 below (where the market conditions do not improve), the analysis assumes an increase in cost of 15 basis points. For the scenario in Table 3, where market conditions do improve, the analysis assumes an

[4] The loan volume assumption in this scenario was developed through conversations with a variety of lending institutions. Depository lending institutions indicated that they would use their own capital to originate new student loans rather than take advantage of the participation agreement structure. Non-depository institutions indicated they would use participation agreements. For the top 100 lenders in FY 2007, which together accounted for over 80 percent of FFELP non-consolidation volume, 33 percent of volume was originated by depository institutions and 67 percent by non-depository institutions. (Figures for non-depository institutions include loans made by depository institutions acting as eligible lender trustees.)

Lenders currently have $50 billion in warehouses and substantial additional loans securitized in rollover accounts that will require long-term refinancing. These inventory stocks may provide lenders with an incentive to put loans. Representatives of depository institutions indicated they may increase volume to ensure students have access to loans, but may not want to maintain this additional volume on their books.

In consideration of these factors, estimates assumed all 2008–2009 FFELP non-consolidation loan volume originated by depository institutions over the level originated for 2007–2008 and 50 percent of 2008–2009 loans originated by non-depository institutions and included in the Loan Participation Purchase Program will be put. Estimates further assumed that all loans of $1,000 or less would be put first, with the balance up to the total amount put made up of loans of over $1,000.

increase in cost of 5 basis points. Assumptions are based on an estimated one-year default rate of lenders and potential recoveries on default.

• *Interest adjustments.* If financial market conditions significantly improve between now and the end of September 2009, lenders that took advantage of the participation agreements might opt to buy their loans out early and finance them privately through more favorable rates. While this outcome is highly desirable from a policy perspective, it would deprive the Department of some of the margin income it might expect from the participation agreement under a scenario where lenders opt to maintain their loans in the participation agreements until the last possible moment. The cost neutrality analysis below assumes a 20 basis point increase in the cost for interest that the Department does not realize, based on the expected placement of FFELP loans in the participation interest program, and the difference between the commercial paper rate plus 50 basis points lenders must pay the Department and the cost of Government borrowing.

• *Operational risk.* Operational risk is in general a major concern in all credit activities in both the public and private sectors, and has been a major focus in recent efforts to overhaul bank regulations. (Operational risk is limited in this analysis to that related to funding and management of the participation or loan purchase agreements.) In the new Purchase Program and Participation Program, operational risk might result from imperfect controls of ineligible lending, servicing errors, technology failures, and the risk of fraud. While the Department has made every effort to mitigate operational risk, the emergency nature and accelerated implementation timeframe for these Programs make operational risk more of a concern than in established Department programs. For the low risk scenario, the analysis below assumes a 10 basis point increase in cost, reflecting risks other than credit or market risk, as banks are currently required to finance on average about eight percent of their assets with capital. For the high scenario, we raised the factor related to operational risk by 70 basis points to equal a total of 0.80 percent. We estimated this worst-case scenario using survey data from bank regulators implementing an overhaul of bank regulations. The largest United States banking organizations will be subject to a new system of capital requirements which includes an explicit charge for operational risk. Under that regulation banks must develop models generating a probability distribution of losses for operational risk, and hold capital equal to the 99.9th percentile of that estimated probability distribution. Banks were surveyed to measure the anticipated impact of the regulation. Using the best available models of operational risk, the banks reported that operational risk would account for roughly ten percent of their required capital. As banks currently finance on average about eight percent of their assets with capital, worst-case scenario operational risk losses can thus be estimated at about one percent of total assets. Also, while we do not believe that this program has, or necessarily will, face such a level of operational risk, we developed the high scenario to ensure that the program is cost neutral, even under extreme and unlikely circumstances.

• *Claim rejects.* This risk factor takes into account the costs associated with the purchase of loans that would not typically qualify for the federal guarantee in the FFEL program due to improper origination or servicing. The 6 basis point increase in cost is based on a historical rejected claim rate of 1 percent of volume, and assumes that these loans would have higher loss rates than the average portfolio.

Cost estimates reflecting these factors, for each of the market condition and lender behavior scenarios discussed elsewhere in this notice, were calculated and included, as illustrated in *Tables 2* and *3.* As those analyses show, even with these risk adjustments, the estimated costs of the loans included in the Purchase Program and Participation Program remained lower than those for standard FFELP loans.

Conclusion. After taking into account alternative market and lender behavior scenarios and appropriate risk factors, the Secretaries and Director determine that the Purchase Program and Participation Program are in the best interest of the United States and will result in no net cost to the Federal Government (including the cost of servicing the loans purchased).

Applicable Program Regulations: 34 CFR part 682.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530. You may also view this document in PDF at the following site: *http://www.ifap.ed.gov.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

Program Authority: 20 U.S.C. 1087i–1.

Dated: June 25, 2008.

Margaret Spellings,

Secretary of Education.

Dated: June 25, 2008.

Henry M. Paulson, Jr.,

Secretary of the Treasury.

Dated: June 25, 2008.

Jim Nussle,

Director, Office of Management and Budget.

BILLING CODE 4000–01–P

APPENDIX A
Tables

Table 1

Savings from Loan Purchase Authority

Baseline: No intervention in the Federal Family Education Loan (FFEL) Program, 2008/2009 Award Year

	Volume (in millions)			Cost Percentage		Outlays (in millons)		
	2008	2009	Total	2008	2009	2008	2009	Total
Stafford	12,241	12,317	24,558	15.72%	15.46%	1,925	1,904	3,829
PLUS	5,707	3,445	9,152	-6.58%	-6.48%	(376)	(223)	(599)
Unsubsidized Stafford	14,660	16,158	30,818	-4.14%	-3.22%	(606)	(521)	(1,127)
Total	32,607	31,920	64,527	2.89%	3.64%	942	1,160	2,103

Table 2

Savings from Loan Purchase Authority

Scenario 1: All loans financed through purchase agreement. Lender financing does not recover; Education purchases half the loan volume under the participation agreement.

	2008	2009	2008	2009	Combined
	Cost Percentage		Total Outlays by Cohort (in millions)		
Upfront Administrative Expense			16	0	16
Participation Interest Program					
Volume, participation agreement (non-add)			*32,607*	*31,920*	*64,527*
Volume, put loans (non-add)			*16,304*	*15,960*	*32,264*
Base FFEL Costs (Pre-Purchase)	-0.61%	-0.67%	-99	-106	-205
Program Costs	-1.64%	-0.21%	-268	-33	-301
Administrative Expenses (NPV)	1.11%	1.37%	181	219	400
Total, Participation Interest Program	-1.14%	0.50%	-186	79	-107
Loans remaining in FFEL					
Volume (non-add)			*16,304*	*15,960*	*32,264*
Program Costs	2.89%	3.64%	471	580	1,051
Total volume (non-add)			*32,607*	*31,920*	*64,527*

Total	0.92%	2.07%	301	659	960
Δ from Baseline	**-1.97%**	**-1.57%**	**(641)**	**(501)**	**(1,142)**
Base Case Risk Adjustment					
Purchased loan risk					
Volume (non-add)			*16,304*	*15,960*	*32,264*
Claim Rejects	0.06%	0.06%	10	10	19
Purchase agreement risk					
Volume (non-add)			*32,607*	*31,920*	*64,527*
Interest Adjustments (prepayment)	0.20%	0.20%	65	64	129
Bankruptcy Remoteness	0.15%	0.15%	49	48	97
Operational risk	0.10%	0.10%	33	32	65
Added Risk			157	153	310
Total subsidy			458	812	1,270
Δ from Baseline	**-1.49%**	**-1.09%**	**(485)**	**(348)**	**(833)**
Risk Adjustment (high)					
Volume (non-add)			*32,607*	*31,920*	*64,527*
Operational risk (high)	0.70%	0.70%	228	223	452
Added Risk			228	223	452
Total subsidy			686	1,036	1,722
Δ from Baseline (high)	**-0.79%**	**-0.39%**	**(256)**	**(124)**	**(381)**

Table 3

Savings from Loan Purchase Authority

Scenario 2: Lender financing recovers; Education purchases costly loans.

	2008	2009	2008	2009	Combined
	Cost Percentage		Total Outlays by Cohort (in millions)		
Upfront Administrative Expense			16	0	16
Participation Interest Program					
Volume, participation agreement (non-add)			*21,278*	*21,039*	*42,317*
Volume, put loans (non-			*10,639*	*10,519*	*21,158*

add)					
Base FFEL Costs (Pre-Purchase)	-0.66%	-0.59%	-70	-62	-131
Program Costs	-1.10%	0.30%	-117	32	-85
Administrative Expenses (NPV)	1.20%	1.50%	127	158	285
Total, Participation Interest Program	-0.56%	1.22%	-59	128	68
Loan Purchase Program					
Volume (non-add)			*1,449*	*1,413*	*2,862*
Base FFEL Costs (Pre-Purchase)	-0.26%	-0.48%	-4	-7	-10
Program Costs	1.95%	2.89%	28	41	69
Administrative Expenses (NPV)	1.33%	1.22%	19	17	37
Total, Loan Purchase Program	3.02%	3.63%	44	51	106
Loans remaining in FFEL					
Volume (non-add)			*20,519*	*19,988*	*40,507*
Program Costs	2.93%	3.69%	601	737	1,339
Total volume (non-add)			*32,607*	*31,920*	*64,527*
Total	1.84%	2.87%	601	916	1,518
Δ from Baseline	**-1.05%**	**-0.76%**	**(341)**	**(244)**	**(585)**
Base Case Risk Adjustment					
Purchased loan risk					
Volume (non-add)			*12,089*	*11,932*	*24,021*
Claim Rejects	0.06%	0.06%	7	7	14
Purchase agreement risk					
Volume (non-add)			*21,278*	*21,039*	*42,317*
Interest Adjustments (prepayment)	0.20%	0.20%	43	42	85
Bankruptcy Remoteness	0.05%	0.05%	11	11	21
Operational risk	0.10%	0.10%	21	21	42

Added Risk			82	81	163
Total subsidy			683	997	1,680
Δ from Baseline	**-0.79%**	**-0.51%**	**(259)**	**(163)**	**(422)**
Risk Adjustment (high)					
Volume (non-add)			*21,278*	*21,039*	*42,317*
Operational risk (high)	0.70%	0.70%	149	147	296
Added Risk			149	147	296
Total subsidy			832	1,145	1,977
Δ from Baseline (high)	**-0.34%**	**-0.05%**	**(110)**	**(16)**	**(126)**

APPENDIX B
Loan Purchase Commitment Program for Eligible FFELP Loans

Summary of Terms and Conditions

These terms and conditions do not purport to be all of the terms and conditions that will govern the Loan Purchase Commitment Program. The final terms and conditions of the Loan Purchase Commitment Program will be those included in a definitive Master Loan Sale Agreement and other documentation related thereto.

Purchase Program Purpose: The purpose of the Loan Purchase Commitment Program ("Purchase Program") is to encourage Eligible Lenders, as defined below, to provide students and parents access to Stafford and PLUS loans made under the Federal Family Education Loan Program ("FFELP") for the 2008-2009 academic year, by providing a market for Eligible Loans during the term of the Purchase Program. The Purchase Program described herein will consist of a standard Master Loan Sale Agreement ("Master Loan Sale Agreement") to be provided by the Department of Education ("Department") and related documents to which each Eligible Lender will agree.

Purchase Program Authority: Under section 459A of the Higher Education Act of 1965 ("HEA"), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. 110-227), the Department has the authority to purchase, or enter into forward commitments to purchase, student loans made under sections 428 (subsidized Stafford loans), 428B (PLUS loans), or 428H (unsubsidized Stafford loans) of the HEA, on such terms as the Secretary of Education ("Secretary"), the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interest of the United States.

Program Description: Pursuant to the terms of the Purchase Program, the Department may purchase Eligible Loans that are held by Eligible Lenders. Such purchases may occur during the period commencing on July 1, 2008 and ending on September 30, 2009. To participate in the Purchase Program, each Eligible Lender must submit a Notice of Intent to Participate in the Program. With the filing of the Notice of Intent to Participate, the Eligible Lender is vested with the option to put Eligible Loans to the Department for purchase. Prior to executing the put, the Eligible Lender must enter into a Master Loan Sale Agreement with the Department, as explained later here. Entering into the Master Loan Sale Agreement preserves the put option. Neither the filing of the Notice of Intent to Participate nor the Master Loan Sale Agreement commits the Eligible Lender to put Eligible Loans to the Department.

Upon execution of the put option, the Lender must transfer title to the loans it sells, and at the direction of the Department, deliver to the Department or its agent the fully executed master promissory note (or all electronic records evidencing the same) evidencing each Eligible Loan that the Eligible Lender wishes to sell to the Department and any and all other documents and computerized records relating to such Eligible Loans.

In order to acquire the option to sell loans under this Purchase Program, an Eligible Lender must first file a Notice of Intent to Participate in the Purchase Program with the Department, stating its desire to have the option to sell loans to the Department. The timing of the Lender's Notice of Intent controls which loans the Lender may sell. The Lender may not sell Eligible Loans to the Department on which the first disbursement was made prior to the date on which the Department receives the Notice of Intent, unless the Department receives the Notice of Intent on or before a date fifteen calendar days after the terms of the Program are published in the Federal Register. If the Notice is received by that deadline, the Eligible Lender may sell Eligible Loans that were originated on or after May 1, 2008.

Furthermore, if an Eligible Lender wishes to sell an Eligible Loan that it did not originate, both that Eligible Lender and the originating Lender must each file a Notice of Intent to Participate with the Department. Each Lender must file its respective Notice prior to date on which it made or acquired the Loan. In addition, the Department will purchase a Loan made on or after May 1, 2008 from the Lender that acquired that Loan, if that Lender filed its Notice of Intent before it acquired the Loan, and if the originating Lender filed its Notice of Intent within the fifteen day period described above.

Commitment to Future FFELP Participation: By its execution of a Master Loan Sale Agreement, each Eligible Lender represents to the Department that it shall continue to participate in the FFELP and that at such time as funds become reasonably available to such Eligible Lender from private sources, it will originate new FFELP loans or acquire FFELP loans made by other lenders after the date of the Secretary's purchases from such Eligible Lender.

Eligible Lender: Any entity that is an eligible lender under §435(d) of the HEA that holds FFELP Loans (whether directly or through an eligible lender trustee) will be eligible to participate in the Purchase Program, subject to the terms and conditions of the Purchase Program as described herein and in the Master Loan Sale Agreement.

Eligible Loans: The following loans will be eligible for purchase pursuant to the Purchase Program:

> Subject to the Notice Requirements described below, FFELP subsidized or unsubsidized Stafford Loans and FFELP PLUS loans that were made to students (and parent PLUS loans made to parents of dependent students) for loan periods that include, or begin on or after, July 1, 2008 ("Academic Year 2008-09") and on which the first disbursement is made on or after May 1, 2008 but no later than July 1, 2009 and is fully disbursed no later than September 30, 2009.
>
> In order to be eligible for the Purchase Program, each loan must:

(a) have been originated and serviced in compliance with all requirements of applicable law, including the HEA and the implementing regulations;

(b) have been fully disbursed;

(c) bear interest at the stated statutory rate under the HEA for such loan;

(d) be evidenced by a signed master promissory note that contains the terms required by the HEA and the implementing regulations, that does not require the obligor to consent to the transfer, sale or assignment of the rights and duties of the Eligible Lender, and that does not contain any provision that restricts the ability of the Department to exercise its rights under the Master Loan Sale Agreement;

(e) have been originated or acquired by an Eligible Lender and, pursuant to the Program Description above, the Department has received the timely Notices of Intent to Participate; and

(f) satisfy each of the terms, conditions and representations and warranties in the Master Loan Sale Agreement, including without limitation the following representations and warranties:

(1) immediately prior to the sale of the Eligible Loan, the Eligible Lender has good and marketable title to the loan free and clear of any encumbrance, lien or security interest or any other prior commitment (other than as may be granted in favor of the Department or that will be released upon the Department's purchase of such loan);

(2) the loan has not been modified, extended or renegotiated in any way, except as required under the HEA or other applicable laws, rules and regulations, and the applicable guarantee agreement;

(3) the loan constitutes a legal, valid and binding obligation to pay on the part of the related obligor enforceable in accordance with its terms and is not subject to a current bankruptcy proceeding;

(4) the loan has no borrower benefits other than Eligible Borrower Benefits. Eligible Borrower Benefits include only unconditional upfront fee reductions which are accrued and paid or made prior to the date on which an Eligible Loan is sold, or permitted reductions in interest rates of not more than .25 percent

that are contingent on the use of an automatic payment process by the borrower for any payments due;

(5) the sale of the loan does not conflict with law or require consent of any person not a party to the sale; and

(6) the loan satisfies all of the terms and conditions of the Master Loan Sale Agreement; and

(7) if the loan is subject to a servicing agreement, such agreement is terminable upon thirty (30) days' notice, and the Eligible Lender shall be responsible for any de-boarding, deconversion or related fees or expenses to the related servicer; and

(g) if the lender holds more than one Stafford Loan for a borrower, each of which is an Eligible Loan, the lender sells all such Eligible Stafford Loans to the Department.

Loans that are ineligible for the Purchase Program include:

- FFELP Consolidation Loans or any other types of loans not specifically described in the Master Loan Sale Agreement;
- loans disbursed for academic years other than Academic Year 2008-09;
- loans on which the lender has committed to providing the borrower with any borrower benefits other than Eligible Borrower Benefits; and
- loans on which a default claim or other claim for payment on the loan has been filed with the guaranty agency.

Term: In order to participate in the Purchase Program, a lender must be an Eligible Lender and must enter into a single Master Loan Sale Agreement with the Department under which the Eligible Lender will have an irrevocable option to sell Eligible Loans, as defined above, that are fully disbursed, to the Department subject to the terms and conditions of the Master Loan Sale Agreement. The Eligible Lender must notify the Department that it will exercise its option to sell the fully disbursed Eligible Loan(s) no later than August 14, 2009, and must complete all loan sales on or before September 30, 2009. If an Eligible Lender fails to meet one or both of these dates the option expires, and the Department will not honor any commitment to purchase loans.

Purchase Price: The Department will purchase each Eligible Loan at a purchase price equal to the sum of (1) the outstanding principal balance of the Eligible Loan at time of sale, plus (2) accrued and unpaid interest on the Eligible Loan as of time of sale, plus (3) a reimbursement of the one percent loan fee (as provided by section 438(d) of the HEA) previously paid by the Eligible Lender to the Department, plus (4) $75.00.

Document Delivery: In connection with each sale of Eligible Loans, as directed by the Department, the Eligible Lender shall be required to deliver the original fully executed master promissory note evidencing the purchased Eligible Loans and any and all other documents and electronic records evidencing such loans to the entity designated by the Department to retain such documents.

Purchase Frequency: Eligible Lenders shall sell Eligible Loans to the Department not more frequently than weekly.

Closing Conditions: On or prior to the execution of the Master Loan Sale Agreement by an Eligible Lender, such Eligible Lender, as directed by the Department, shall be required to deliver to the Department:

(a) copies of the applicable formation documents, corporate resolutions and good standing certificates for the Eligible Lender;

(b) incumbency certificates of the Eligible Lender;

(c) opinions of the Eligible Lender's counsel relating to corporate matters, legality, validity and enforceability of the Master Loan Sale Agreement and related documents, no conflicts, and such other matters as the Department may request; and

(d) such other documents as the Department may request.

On or prior to each sale of Eligible Loans to the Department, each Eligible Lender shall be required to deliver to the Department:

(a) any required security releases for the Eligible Loans;

(b) a purchase request for such purchase;

(c) loan schedule (in electronic format); and

(d) such other documents as the Department may request.

Notice Requirements: Each Eligible Lender that elects to participate in the Purchase Program must take the following steps:

- The Lender must submit its Notice of Intent to Participate in the program, as explained above.
- The Lender must, no later than March 31, 2009, execute the Master Loan Sale Agreement and provide a statement setting forth representations, warranties and guarantees required by the Department in the Federal Register notice.
- After the Department countersigns the Master Loan Sale Agreement, and at least forty-five (45) days before the date of any intended sale of loans, the Lender must

notify the Department of its intent to sell loans to the Department and must certify that the representations, warranties and guarantees made previously to the Department are current and true.

Loan Servicing: Each loan shall be purchased by the Department on a servicing-released basis. If the loan is subject to a servicing agreement, such agreement must be terminable upon thirty (30) days' notice by the Department. The Department may issue such notice at any time after the Eligible Lender provides notice of its intent to sell loans. The Eligible Lender shall be responsible for any de-boarding, deconversion or related fees or expenses to the related servicer. Accordingly, upon purchase of any Eligible Loan, the Department shall obtain all rights to service such Eligible Loan and may, in its sole discretion require deconversion of such Eligible Loan in order to service the loan itself or through a third-party servicer of its designation.

Fees and Expenses: Each Eligible Lender shall be required to pay all of its costs and expenses which are incurred in connection with the negotiation, preparation, execution and delivery of the Master Loan Sale Agreement and any or any other related documents, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for any Eligible Lender with respect thereto, and all other fees, costs and other expenses incurred in connection with the transfer of ownership of Eligible Loans, and delivery of such loans, to the Department.

Other Department Program: Separately, the Department is offering a Loan Participation Purchase Program for eligible FFELP loans. This Purchase Program does not require, nor does it preclude, the participation of an Eligible Lender in that separate program.

Governing Law and Forum: The Master Loan Sale Agreement and the Notice of Intent to Participate, and the rights and obligations of the parties thereto, shall be governed by and construed in accordance with Federal law. Insofar as there may be no applicable Federal law, the internal laws of the State of New York (without giving regard to conflicts of laws principles other than Sections 5-1401 and 5-1402 of the New York General Obligations Law) shall be deemed reflective of Federal law insofar as to do so would not frustrate the purposes of any provision of the Master Loan Sale Agreement or the transactions governed thereby.

APPENDIX C
Loan Participation Purchase Program for Eligible FFELP Loans

Summary of Terms and Conditions

The following terms and conditions do not purport to be all of the terms and conditions that will govern the Loan Participation Purchase Program. The final terms and conditions of the Loan Participation Purchase Program will be included in a definitive Master Participation Agreement and other documentation related thereto.

Loan Participation Purchase Program Purpose: The purpose of the Loan Participation Purchase Program ("Participation Program") is to encourage Eligible Lenders, as defined below, to provide students and parents access to Stafford and PLUS loans made under the Federal Family Education Loan Program ("FFELP") for the 2008-2009 academic year by selling short-term participation interests in Eligible Loans, as defined below, to the Department of Education ("Department") during the term of the Participation Program. The Participation Program described herein will consist of a standard Master Participation Agreement ("Master Participation Agreement") to be provided by the Department and related documents to which each Eligible Lender and related parties described below will agree.

Participation Program Authority: Under section 459A of the Higher Education Act of 1965 ("HEA"), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (Pub. L. 110-227), the Department has the authority to purchase, or enter into forward commitments to purchase, student loans made under sections 428 (subsidized Stafford loans), 428B (PLUS loans), or 428H (unsubsidized Stafford loans) of the HEA, on such terms as the Secretary of Education ("Secretary"), the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interest of the United States.

Program Description: Pursuant to the terms of the Participation Program, the Department may purchase Participation Interests in Eligible Loans held by an Eligible Lender, acting as a sponsor under a Master Participation Agreement ("Sponsor"). In order to participate in the Participation Program, each Sponsor must enter into a Master Participation Agreement with the Department and a third-party Custodian acceptable to the Department.

Put Option means the option issued to Eligible Lenders by the Department under the Department's separate Loan Purchase Commitment Program. As a condition precedent to the Department's purchase of this Participation Interest in an Eligible Loan in this Loan Participation Purchase Program, both the originating Eligible Lender and, if different, the Eligible Lender then in possession of the Eligible Loan, must each have provided to the Department timely Notice of Intent to Participate in the Loan Purchase Commitment Program ("Put Option").

The participation of an Eligible Lender in the Participation Interest Program does not require that the Eligible Lender exercise the Put Option, as per the terms of this separate program.

Eligible Lender: Any entity that is an eligible lender under § 435(d) of the HEA and that holds FFELP loans (whether directly or through an eligible lender trustee) will be eligible to participate in the Participation Program, subject to the terms and conditions of the Participation Program as described herein and in the Master Participation Agreement.

Sponsor means an Eligible Lender that will sell Participation Interests in FFELP loans under the terms of the Participation Program.

Custodian means the entity selected by the Sponsor and acceptable to the Department that will hold legal title to the Purchased Eligible Loans, as defined below, that are subject to the Participation Interests. In the manner directed by the Department, and pursuant to the terms of a custodial agreement, the Custodian holds the fully executed master promissory note (or all electronic records evidencing the same) evidencing the Purchased Eligible Loans and any and all other documents and computerized records relating to such Purchased Eligible Loans. The Custodian must be a National or State-chartered bank that is an eligible lender pursuant to § 435(d)(1)(A) of the HEA. The Department reserves the right to designate the entities, or the requirements for the entities, that may act as a Custodian for the Participation Program.

Program Structure: Under the Participation Program, a Sponsor shall transfer title to an Eligible Loan to the Custodian in exchange for participation interests in such loan. The Department ("Participant") will purchase from the Sponsor the participation interest issued by the Custodian, evidenced by a participation certificate (each such participation interest, a "Participation Interest," and each such loan backing such Participation Interest, a "Purchased Eligible Loan"), that represents a 100% beneficial ownership interest in the principal portion of each such Purchased Eligible Loan, and the right to receive the "Participant's Yield."

The Participant's Yield for each Participation Interest is an amount equal to the principal portion of such Purchased Eligible Loan multiplied by the product of the commercial paper rate determined by the Department and published pursuant to § 438(b)(2)(I)(i)(I) of the HEA ("Commercial Paper Rate") plus fifty (50) basis points ("Spread") for each quarter during which the Department holds a Participation Interest for such Loan, and the number of days during such quarter during which the Department holds the Participation Interest in such principal portion divided by 360. Following the occurrence of certain adverse events specified in the Master Participation Agreement, including filing for bankruptcy, the Spread shall be increased to three hundred (300) basis points.

The Custodian will acquire and hold title to the Purchased Eligible Loans in trust for the benefit of the Department as the owner of the Participation Interest, until that Participation Interest is redeemed in full.

The Custodian will issue a second participation certificate to the Sponsor with respect to the Purchased Eligible Loans, which will evidence the Sponsor's right to redeem the Purchased Eligible Loans by exercise of the Put Option or otherwise, and subject to the terms of the Master Participation Agreement, the Sponsor's right to receive all collections on the Eligible Loans, net of the Participant's Yield and the principal collections on the Purchased Eligible Loans.

In order to protect the interests of the Department, the Department will also be granted a protective first priority perfected security interest in the following assets: (i) the Purchased Eligible Loans in which it has a Participation Interest; (ii) all payments received on the Purchased Eligible Loans and all funds collected or to be collected with respect to such Loans; and (iii) any monies on deposit in accounts established under the related Master Participation Agreement (including the Collection Account), and all related rights and security with respect thereto under the related Master Participation Agreement. Each purchase of additional Purchased Eligible Loans, or additional amounts subsequently disbursed on Purchased Eligible Loans that are subject to a Participation Interest, will be evidenced by an increase in the outstanding principal balance of the related Participation Interest. The amount of Purchased Eligible Loans and the balance of the Participation Interest may decrease as principal payments or other reductions in the principal balance are made with respect to the Purchased Eligible Loans and remitted to the Department or in connection with the redemption or exercise of the Put Option with respect to any Purchased Eligible Loans.

The Master Participation Agreement shall include representations, warranties and covenants and events of default and other termination events as are customary under similar participation interest facilities or as are determined by the Department.

Commitment to Future FFELP Participation: By its execution of a Master Participation Agreement, each Eligible Lender represents to the Department that it shall continue to participate in the FFELP and that at such time as funds become reasonably available to the Eligible Lender from private sources, it will originate new FFELP loans or acquire FFELP loans made by other lenders after the date of the Secretary's purchases from the Eligible Lender.

Eligible Loans: The following loans will be eligible for the Participation Program:

> Subject to the Notice Requirements described below, FFELP subsidized or unsubsidized Stafford Loans and FFELP PLUS loans made to students and parents of dependent students for loan periods that include, or begin on or after, July 1, 2008 ("Academic Year 2008-09"), and for which the first disbursement is made on or after May 1, 2008 but no later than July 1, 2009, and that is scheduled to be fully disbursed no later than September 30, 2009.
>
> In order to be eligible for the Participation Program each loan must:

(a) have been originated and serviced in compliance with all requirements of applicable law, including the HEA and the implementing regulations;

(b) have had at least one disbursement made;

(c) bear interest at the stated statutory rate under the HEA for such loan;

(d) be evidenced by a signed master promissory note that contains the terms required by the HEA and the implementing regulations, that does not require the obligor to consent to the transfer, sale or assignment of the rights and duties of the Sponsor, and that does not contain any provision that restricts the ability of the Department to exercise its rights under the Master Participation Agreement;

(e) be eligible, when fully disbursed, to be sold to the Department through the Put Option; and

(f) satisfy each of the terms, conditions and representations and warranties in the Master Participation Agreement, including without limitation the following representations and warranties:

(1) immediately prior to delivery of legal title to the Custodian, the Sponsor has good and marketable title to the loan free and clear of any encumbrance, lien or security interest or any other prior commitment (other than as may be granted in favor of the Department or that will be released upon the Department's purchase of a participation interest in such loan);

(2) the loan has not been modified, extended or renegotiated in any way, except as required under the HEA or other applicable laws, rules and regulations, and the applicable guarantee agreement;

(3) the loan constitutes a legal, valid and binding obligation to pay on the part of the related obligor enforceable in accordance with its terms and is not subject to a current bankruptcy proceeding;

(4) the loan has no borrower benefits or other incentive programs other than Eligible Borrower Benefits which include only unconditional upfront fee reductions which are accrued and paid or made prior to the date on which a Participation Interest is sold, or permitted reductions in interest rates of not more than .25 percent that are contingent on the use of an automatic payment process by the borrower for any payments due;

(5) the transfer of the loan to the Custodian and the sale of the Participation Interest does not conflict with law or require consent of any person not a party to the transaction;

(6) the loan satisfies all of the terms and conditions of the Master Participation Agreement;

(7) if the loan has not been fully disbursed, the Sponsor will make all subsequent scheduled disbursements as an agent of the Custodian;

(8) if the loan is subject to a servicing agreement, such agreement must be terminable upon thirty (30) days' notice, and the Sponsor shall be responsible for any de-boarding, deconversion or related fees or expenses to the related Servicer, as defined below.

Loans that are ineligible for the Participation Program include:

- FFELP Consolidation Loans or any other types of loans not specifically described in the Master Participation Agreement;
- loans disbursed for an academic year other than Academic Year 2008-09;
- loans on which the lender has committed to providing the borrower with any borrower benefits other than Eligible Borrower Benefits;
- loans that have not had at least one disbursement as of July 1, 2009;
- loans in which the Department has previously purchased a Participation Interest, whether or not that interest has been redeemed; or
- loans on which a default claim or other claim for payment on the loan has been filed with the guaranty agency.

Term: In order to participate in the Participation Program, a Sponsor must be an Eligible Lender and must enter into a single Master Participation Agreement with the Department under which the Sponsor will have an irrevocable option to sell to the Department, subject to the terms and conditions of the Master Participation Agreement, Participation Interests in each Eligible Loan. The Department will not enter into any Master Participation Agreements with Eligible Lenders after July 1, 2009. The Sponsor must exercise the option to sell Participation Interests in Eligible Loan(s) on or before August 1, 2009.

After August 1, 2009, the option to sell Participation Interests expires, and the Department will not honor any commitment to purchase Participation Interests in any loans. However, the Department will purchase a Participation Interest in a second disbursement of a Purchased Eligible Loan after that date on the following conditions --

- the first disbursement on the Loan was made by July 1, 2009,

- the Loan became subject to a Participation Interest by August 1, 2009,
- the second disbursement was made between August 1, 2009 and September 14, 2009,
- the Sponsor notified the Department that it intended to redeem the Participation Interest with respect to the Loan by selling the Loan to the Department by the Put Option, and
- the Sponsor then completes the sale under the Put Option within 30 days of the second disbursement.

Purchase Price: The Department will purchase each Participation Interest at a purchase price equal to the outstanding principal balance of the Eligible Loans subject to such Participation Interest at time of the purchase of such Interest. To maintain the Department's 100% interest in the principal balance of each Purchased Eligible Loan, the Sponsor shall be required to fund any subsequently scheduled disbursements on such loan, and the Department will purchase a Participation Interest in any amount subsequently disbursed on such Purchased Eligible Loans.

Collection Account: A segregated pledged account established at the Custodian for the purpose of holding all payments and other proceeds received on or with respect to the Purchased Eligible Loans, including proceeds of the sale of such loans ("Collections") for the benefit of the Department, as holder of the Participation Interest. The Servicers, as defined below, will deposit all Collections as soon as possible, but in no event later than two (2) business days after receipt of good funds, into the Collection Account.

Responsibility for Fees and Other Charges: The Custodian is responsible for any fee or other charge owed to the Department or to the guaranty agency on an Eligible Purchased Loan after the loan has been transferred to the Custodian, including amounts owed to the Department as a recapture of excess interest ("negative special allowance").

Permitted Investments: All amounts on deposit in each Collection Account may be invested only in overnight or short-term U.S. Treasury securities that will, in all cases, mature on or prior to the day immediately preceding the date such funds are required to be disbursed.

Minimum Delivery Requirements: Each Sponsor that enters into a Master Participation Agreement with the Department shall be required to represent and warrant to the Department that such Sponsor intends to sell to the Department during the term of the Participation Program, participation interests in Eligible Loans with an aggregate unpaid principal balance of not less than $50,000,000. In order to satisfy such minimum delivery requirement, a Sponsor shall be permitted to aggregate Eligible Loans originated or held by other Eligible Lenders, provided that such Sponsor has authority to convey legal title to such Eligible Loans to the Custodian and to sell Participation Interests in Eligible Loans originated or held by such other Eligible Lenders. Eligible Lenders that claim Special Allowance Payments (SAP) at the rate payable for eligible not-for-profit holders and that seek to aggregate Eligible Loans must do so through a Sponsor that aggregates only loans that qualify for SAP at that rate.

Purchase Frequency: Sponsors shall sell Participation Interests to the Department not more frequently than weekly.

Closing Conditions: On or prior to the execution of the Master Participation Agreement by a Sponsor, such Sponsor shall be required to deliver to the Department:

(a) copies of the applicable formation documents, corporate resolutions and good standing certificates for the Sponsor;

(b) incumbency certificates of the Sponsor;

(c) opinions of the Sponsor's counsel relating to corporate matters, legality, validity and enforceability of the Master Participation Agreement and related documents, perfection, no conflicts, and such other matters as the Department may request;

(d) agreements, if any, with other Eligible Lenders to aggregate, transfer legal title to, and sell participation interests in Eligible Loans;

(e) UCC search reports and all UCC-1 Financing Statements;

(f) Master Participation Agreement, Eligible Servicing Agreement, as defined below (if any), Custodial Agreement (if not included as part of the Master Participation Agreement); and

(g) such other documents as the Department may request.

On or prior to each sale of a Participation Interest in Eligible Loans to the Department, each Sponsor shall be required to deliver to the Department:

(a) any required security releases for the Eligible Loans;

(b) list of lockboxes and copies of lockbox servicing instructions, to the extent not already provided;

(c) a purchase request for such purchase;

(d) Loan Schedule (in electronic format); and

(e) such other documents as the Department may request.

In addition, the Custodian will be required to deliver to the Department (a) a certification evidencing receipt and review of each of the loan documents relating to the Eligible Loans, and (b) a Participation Certificate.

Custodian Monthly Closing Reports: The Custodian will provide to the Department a monthly settlement date report in the form specified by the Department on the day of the month specified by the Department summarizing loan activity for the prior calendar month.

Loan Servicing: Each Eligible Loan which is subject to a Participation Interest shall be serviced by or at the direction of the Custodian. To service the Loans, and in its discretion and pursuant to directions from the Department, to maintain custody of Loan records, the Custodian may retain the Sponsor or a servicer of FFELP student loans not under sanction by the Department. The entity that services the Loans ("Servicer") must do so pursuant to the terms of an Eligible Servicing Agreement, as defined below, and in accordance with Department regulations. The Sponsor will be responsible for the payment of any servicing related fees and expenses incurred in connection with the Participation Program. A servicing agreement will be deemed to be an "Eligible Servicing Agreement" if it: (i) contains customary terms and conditions that reflect a negotiated, arms-length transaction; (ii) provides for not more than a fair market servicing fee; (iii) includes usual and customary representations, warranties, covenants and events of default; (iv) acknowledges or be amended to acknowledge that the Department is an intended third-party beneficiary of such agreement entitling the Department to instruct the Servicer and exercise remedies with respect to the applicable Purchased Eligible Loans upon the occurrence of a Termination Event (as defined under the Master Participation Agreement); and (v) provides that any Servicer will deposit all funds received on Purchased Eligible Loans into the Collection Account (as defined above) no later than two (2) business day after receipt of good funds.

Each Eligible Servicing Agreement will also provide that upon notice of the exercise of the Put Option or other acquisition of a Purchased Eligible Loan by the Department, such agreement is terminable upon thirty (30) days' notice without the payment of any de-boarding, deconversion or related costs, penalties or fees to the related Servicer and that the servicing shall be transferred as instructed by the Department. Accordingly, upon purchase of any Eligible Loan or other acquisition of title thereto, the Department shall obtain all rights to service such Eligible Loan and may, in its sole discretion, require deconversion of such Eligible Loan in order to service the loan itself or through a third-party Servicer of its designation.

Servicing Standard: Each Servicer will manage, service, administer, make collections and calculate any amounts owed to the Department with respect to the Purchased Eligible Loans (including collection of any interest subsidy payments and special allowance payments and calculate any negative special allowance owed with respect to the Purchased Eligible Loans) in accordance with all requirements as set forth in the established Master Participation Agreement, including but not limited to compliance with all applicable federal and state laws, including all applicable rules, regulations and other requirements of the HEA and the applicable guarantee agreement. Each Servicer shall be responsible for segregating, marking each Eligible Purchased Loan as owned by the related Custodian and remitting to the Custodian all payments received on the Purchased

Eligible Loans. This includes, but is not limited to, physical or electronic marking of relevant computer records.

Additional Reports and Information: The Sponsor and the Custodian may be required by the Department to provide regular monthly reports regarding transactions affecting loans, including information identifying the schools for which loans were made, loan delinquencies, and other information.

At any time, the Department and its representatives will have the right to request, schedule and conduct, during normal business hours and upon reasonable prior notice, a due diligence/audit of the Servicer's operations in respect to this Participation Program, the transaction documents, the Eligible Purchased Loans and settlement reports at the expense of the Servicer or Sponsor. Also, from time to time during a calendar year, the Department shall have the right to request, schedule and conduct, during normal business hours and upon reasonable prior notice, additional due diligence of the Sponsor, the Custodian and any Servicers, at the Sponsor's expense.

With respect to each Servicer, the Department shall be provided any audit reports or other annual compliance/operational audits performed on such Servicer relating to the servicing of FFELP student loans.

The Custodian shall be responsible for providing to the Department within 90 days after the Termination Date of a Participation, as provided in the Master Participation Agreement, an audit conducted by an independent auditor of the Custodian's activities under that Participation.

Other information as requested by the Department shall be delivered to the Department, which may include audited annual financial statements or unaudited quarterly financial statements of the Sponsor and any Servicer or their respective consolidated groups.

Statements of Compliance: Both the Sponsor and the Servicer will provide to the Department a statement of compliance with respect to the Master Participation Agreement and any related documents and applicable law, together with an agreed upon procedures letter delivered by an independent public accountant with respect to the Master Participation Agreement, all in form acceptable to the Department within 60 days of the execution of the Master Participation Agreement and on any subsequent dates specified by the Department.

Operation of the Participation Program: The Department will pay the Sponsor the purchase price for a Participation Interest promptly after the Sponsor notifies the Department and the Custodian confirms that a disbursement has been made on the Eligible Loan and the Eligible Loan has been placed in the Participation Program, subject to timing and frequency arrangements specified herein and in the Master Participation Agreement. The Department will remit this payment through the Custodian. The Sponsor is responsible for ensuring that all fees and charges, and all servicing requirements under FFELP rules for a Purchased Loan, are satisfied. In the event that any Eligible Loan has

become subject to a Participation Interest and such Eligible Loan is purchased out of the Participation Program by the Sponsor or any other entity, such loan shall cease to be eligible for the Participation Program and no Eligible Lender shall thereafter be permitted to sell a Participation Interest in such loan to the Department.

A Purchased Eligible Loan that becomes and remains delinquent must be redeemed by the Sponsor not later than the 255th day of such delinquency.

Termination Date: The termination date for each Participation Interest will be the earliest to occur of (i) the date on which the Sponsor notifies the Department that it will no longer be a participant in the program and reduces its amount outstanding to zero, (ii) the effective date of a termination event, including, without limitation, the bankruptcy, insolvency or other adverse event with respect to the Sponsor, and (iii) September 30, 2009.

Resolution of the Facility; Redemption Payment/Put Option: Under the terms of the Participation Program, each Participation Interest will expire on September 30, 2009. On or before such date, the Sponsor must pay the Custodian for remittance to the Department, with respect to each Purchased Eligible Loan subject to the Participation Interest, the purchase price paid by the Department for the Participation Interest in such Purchased Eligible Loan together with the Participant's Yield on such purchase price, calculated through the next scheduled distribution date. Upon receipt of this redemption payment by the Custodian, the Department agrees to release its interest in any Eligible Loan which is subject to any Participation Interest that is so redeemed. If the Sponsor elects to exercise the Put Option with respect to such underlying Eligible Loans, the Sponsor will release its interest in such Eligible Loans to the Department, and the Department will offset the Redemption Payment owed by Sponsor against the amount due the Sponsor under the Put Option and will remit the net amount to the Custodian.

On the Termination Date, all Purchased Eligible Loans, and the related servicing rights attributable to such loans, for which the Sponsor has not made the Redemption Payment shall become the property of the Department without any further action by the Department and the Participation Interests and the rights of the Department and the Sponsor under the Master Participation Agreement shall be terminated.

Distribution of Funds:

Monthly distribution: On a monthly basis, the Custodian will remit to the Department funds on deposit in the Collection Account in order to satisfy the outstanding Participant's Yield and Participation Interest.

Final distribution: On or before October 20, 2009, the Custodian shall distribute any remaining funds in the Collection Account, in the following order of priority:

a) To the Department, the Participant's Yield;

b) To the Department, any remaining amounts until its Participation Interest balance is reduced to zero; and

c) To the Sponsor, any remaining amounts.

Notice Requirements: The Department will publish the terms of the Loan Participation Purchase Program in the Federal Register. Each Eligible Lender that elects to participate in the Participation Program must take the following steps –

- The Lender must submit to the Department a Notice of Intent to Participate in the Loan Participation Purchase Program and the Loan Purchase Commitment Program.
- Upon confirmation of receipt by the Department of the Notice of Intent, the Lender must provide a good faith estimate of the amount of Participation Interests it proposes to sell to the Department throughout the term of the Participation Program. Additionally, the Lender must update this estimate on a monthly basis
- The Lender must execute the Master Participation Agreement and provide the representations, warranties and guarantees required by the Department under that Agreement by the earlier of July 1, 2009, or the closing date of the sale of the first Participation Interest.
- If the Lender proposes to exercise the Put Option to sell Purchased Eligible Loans to the Department, the Lender must, after the Department countersigns the Master Participation Agreement, and at least forty-five (45) days before the date of any intended sale of loans, notify the Department of its intent to sell loans to the Department and must certify that the representations, warranties and guarantees made previously to the Department are current and true.

The timing of the Lender's Notice of Intent controls which loans for which the Lender may sell Participation Interests. The Eligible Lender may not sell Participation Interests to the Department relating to loans for which the first disbursement was made prior to the date on which the Department receives the Notice of Intent, unless the Department receives the Notice of Intent on or before a date fifteen calendar days after the terms of the program are published in the Federal Register. If the Notice is received by that deadline, the Eligible Lender may sell Participation Interests relating to Eligible Loans that were originated on or after May 1, 2008.

Furthermore, if an Eligible Lender wishes to sell a Participation Interest to the Department in an Eligible Loan that it did not originate, both that Eligible Lender and the Lender that made the loan must each file a Notice of Intent to Participate with the Department. Each Lender must file its respective Notice prior to date on which it made or acquired the Loan. In addition, the Department will purchase a Participation Interest from a Lender that acquired a Loan made on or after May 1, 2008, if that Lender filed its Notice of Intent before it acquired the Loan, and the originating Lender filed its Notice of Intent within the fifteen day period described above.

Fees and Expenses: Each Sponsor shall be required to pay all of its costs and expenses which are incurred in connection with the negotiation, preparation, execution and delivery of the Master Participation Agreement and any or any other related documents, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for such Sponsor, all other costs and expenses of servicing the Purchased Eligible Loans, and all costs and expenses incurred in connection with the transfer and delivery of the Purchased Eligible Loans to the Custodian, including, without limitation, the fees of the custodian and any fees and expenses incurred in connection with transferring ownership of any Purchased Eligible Loans to the Custodian or to the Department in connection with the exercise of the Put Option or any other acquisition of ownership of the Purchased Eligible Loans by the Department.

Governing Law and Forum: The Master Participation Agreement, the Notice of Intent to Participate, and the rights and obligations of the parties thereto shall be governed by and construed in accordance with Federal law. Insofar as there may be no applicable Federal law, the internal laws of the State of New York (without giving regard to conflicts of laws principles other than Sections 5-1401 and 5-1402 of the New York General Obligations Law) shall be deemed reflective of Federal law insofar as to do so would not frustrate the purposes of any provision of the Master Participation Agreement or the transactions governed thereby.

APPENDIX D
NOTICE OF INTENT TO PARTICIPATE

[_____, 200_]

U.S. Department of Education
Washington, D.C.
By: E-mail: Kristie.Hansen@ed.gov

Re: [ELIGIBLE LENDER] Loan Purchase Commitment Program and/or Loan Participation Purchase Program for Eligible FFELP Loans

Ladies and Gentlemen:

The undersigned eligible Federal Family Education Loan Program (FFELP) lender under Section 435(d) of the Higher Education Act of 1965, as amended (HEA), hereby notifies the United States Department of Education that it intends to participate in one or both of the following FFELP Loan Purchase programs for the 2008-2009 academic year. The Loan Purchase programs are authorized under Section 459A of the HEA, as amended by the Ensuring Continued Access to Student Loans Act of 2009 (Pub. L. 110-227), and described in the Notice of terms and conditions of purchase of loans under the Ensuring Continued Access to Student Loans Act of 2008 (Register Notice) published in the Federal Register, Vol. 73, No. [__], July [__], 2008. Signifying intent to participate in one or both of the programs offered does not require actual participation in such programs.

CHECK THE APPLICABLE BOX(ES): ☐ Loan Purchase Commitment Program
☐ Loan Participation Purchase Program and the Loan Purchase Commitment Program

By signifying its intent to participate in such program(s), the undersigned hereby certifies and agrees that:

1. The eligible lender will continue to originate or acquire FFELP loans made to students and parents.

2. If the eligible lender participates in the Loan Participation Purchase Program, it will sell, from time to time, participation interests in FFELP loans to the Department of Education with an aggregate unpaid principal balance of not less than $50,000,000 in loans either held by such eligible lender or aggregated with other FFELP loans held by one or more eligible lenders.

3. The eligible lender acknowledges that it shall not be permitted to sell FFELP loans or participation interests therein to the Department of Education with respect to which the first disbursement was made prior to the date on which the Department of Education receives this Notice of Intent to Participate, except that, if the Department of Education receives this Notice of Intent to Participate within fifteen days of publication of the Register Notice the eligible lender shall be permitted to sell to the Department of

Education FFELP loans or participation interests therein, as applicable, where the first disbursement of the loan(s) was made on or after May 1, 2008.

For the purpose of item 3 above, the Department of Education will return to the undersigned, via electronic mail (E-mail), a copy of this Notice of Intent to Participate indicating the date it was received by the Department of Education.

The Department of Education has provided that it will accept signed copies of this Notice of Intent sent via E-mail at the address below.

The undersigned is aware that it must refer to the Register Notice and to the agreements referred to therein for a complete description of the terms and conditions under which the Department of Education will administer the Loan Purchase Programs. The undersigned also is aware that in order to participate in the Loan Purchase programs it must execute a Master Agreement for the respective program

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above.

By executing this Notice of Intent, the undersigned now possess an option to sell loans to the Department of Education, under the terms and conditions of the Loan Purchase Commitment Program.

The undersigned asks that the Department of Education please direct all inquiries and correspondence relating to these programs to:

[ELIGIBLE LENDER]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]
Attention of: [NAME], [TITLE]
By facsimile – [XXX-XXX-XXXX]
By e-mail – [EMAIL]

[ELIGIBLE LENDER]

By:_____
Name:
Title:

The completed, signed, and dated Notice of Intent to Participate should be sent as a PDF attachment to an email message addressed to Kristie.Hansen.@ed.gov. The email message subject line should read "Submission of Notice of Intent to Participate.

For questions concerning the submission and receipt of the email please call Kristie Hansen at (202) 377-3309.

[FR Doc. E8–14820 Filed 6–30–08; 8:45 am]
BILLING CODE 4000–01–C