

**VOLUNTARY FLEXIBLE AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF EDUCATION
AND
THE MASSACHUSETTS HIGHER EDUCATION ASSISTANCE CORP.
(d/b/a AMERICAN STUDENT ASSISTANCE)**

This Voluntary Flexible Agreement (VFA) is between the United States Department of Education (Department) and the Massachusetts Higher Education Assistance Corporation (d/b/a American Student Assistance) (ASA) and dated as of _____, 2001

WHEREAS, ASA is a guaranty agency participating in the Federal Family Education Loan (FFEL) Program administered and regulated by the Department under Title IV, Part B of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1071, et seq.; and

WHEREAS, ASA and the Department are currently parties to certain Agreements, governing ASA's participation as a guaranty agency in the FFEL Program, including the Agreement for Federal Reinsurance of Loans pursuant to §428(c) of the Higher Education Act of 1965, dated September 6, 1968 (the "Existing Agreements") and which the parties wish to amend, in whole or in part, as required to effectuate this VFA; and

WHEREAS, Section 428A of the Higher Education Act (HEA) provides that the Department may enter into VFAs with guaranty agencies; and

WHEREAS, ASA wishes to engage in an affirmative program of borrower education and relationship building to minimize defaults in the FFEL Program and to promote borrower "Wellness"; and

WHEREAS, the Department and ASA want to use this VFA to allow ASA to develop new processes, policies and procedures, modify its financial operations and incentives and undertake certain efforts in connection with FFEL loans to test new ways of doing business in the FFEL program; and

WHEREAS, the Department has agreed to provide certain waivers of statutory and regulatory requirements to permit this testing as authorized by §428A of the HEA;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. All terms and conditions of the Existing Agreements shall remain in full force and effect except as provided in this Amendment.
2. ASA shall implement its "FFEL Program Wellness Program" with the goal of developing an ongoing relationship with borrowers to reduce delinquencies and help borrowers avoid defaults. As part of this program, ASA shall undertake the following types of activities:

- (a) loan education campaigns designed to educate students and parents regarding college costs and how to pay for college;
 - (b) a Wellness Team approach under which a team created by ASA will assist schools to provide targeted assistance to borrowers;
 - (c) training for financial aid professionals on debt management for borrowers;
 - (d) work with Educational Opportunity Centers to support borrowers;
 - (e) web links for high schools and colleges to the ASA web page;
 - (f) enhanced reporting to support entrance and exit counseling;
 - (g) expanded borrower Internet access to loan information;
 - (h) the creation of appropriate direct mail and e-mail campaigns targeted to borrowers at critical times in the student loan process;
 - (i) improved communication to support and acknowledge timely borrower repayment;
 - (j) providing customized counseling to borrowers;
 - (k) providing links to databases of partners; and
 - (l) with prior notice to the Department, other activities, to assist borrowers in successfully completing a program of higher education financing and repayment;
3. ASA shall test various methods of improving collection on student loans and of working with borrowers and lenders to reduce defaults on student loans, including:
- (a) ASA will enter into partnerships with some or all of the lenders which have loans guaranteed by ASA to provide assistance in counseling and communicating with borrowers prior to a formal Default Aversion request to insure that these borrowers remain current in their payments and avoid delinquency;
 - (b) an alternative request for payment of guarantee process for lenders that expedites the prompt payment of claims to lenders and allows ASA to begin its collection efforts as soon as possible;
 - (c) permitting borrowers to rehabilitate a defaulted loan in accordance with requirements established by ASA on an individual basis, but ASA shall require at least 9 consecutive reasonable and affordable monthly payments by the borrower prior to rehabilitation;
 - (d) collecting on defaulted loans using “best practices” common to the financial services industry, consistent with legal requirements relating to required hearings and notices; and

(e) assigning loans to the Department for collection in accordance with its professional judgment that assignment will improve the possibility of collection.

ASA and the Department will jointly develop methods of evaluating the effectiveness of each of the methods tested by ASA under this Section.

4. In place of the funds otherwise paid to a guaranty agency under the FFEL Program, the Department shall pay or authorize ASA to retain the payments described below:

(a) the Department shall pay ASA a Loan Processing and Issuance Fee in accordance with §428(f) of the HEA and 34 C.F.R. §682.404(j);

(b) the Department shall pay ASA a Portfolio Wellness Fee as described below:

The Portfolio Wellness Fee consists of two (2) components. The first component, the baseline fee, shall be at a rate of 22 basis points per annum. This baseline fee shall be paid on all loans in good standing. The term “loans in good standing” includes any FFEL Program loan in ASA’s portfolio, which meets all of the following criteria:

- The loan has not been paid-in-full
- The loan is not in a default status
- The loan has not been forgiven as a result of death or permanent disability
- The loan has not been submitted by a lender for Default Aversion Assistance
- The baseline fee will be calculated based upon the original principal balance of loans in good standing and shall be payable on a monthly basis.

The second component of the Portfolio Wellness Fee is a variable fee designed to provide a financial incentive associated with improving the default rate on ASA guaranteed loans as compared to the FFEL Program industry on a national basis. This variable fee, to be calculated annually, shall be based upon the “Trigger” default rates as currently defined by the Department. In the first year of this VFA, the ASA Trigger Rate shall be compared to the national trigger rate (exclusive of ASA) with ASA as the numerator and the national rate as the denominator. This fraction shall be expressed as a percentage, which shall be ASA’s Baseline Trigger Index. The same calculation shall be performed for each subsequent year to determine ASA’s Annual Trigger Index. As an incentive, ASA’s annual Portfolio Wellness Fee shall be increased by 0.25 bps for each one-percentage point improvement in its Annual Trigger Index as compared to the Baseline Trigger Index. i.e. the arithmetic difference between ASA’s Baseline Trigger Index and Annual Trigger Index divided by the Baseline Trigger Index.

(c) ASA may retain 18.5 percent of the amount collected by ASA through regular collection on any defaulted FFEL Program loan.

(d) ASA may retain 18.5 percent of the amount of loans consolidated or rehabilitated consistent with 34 C.F.R. §682.401(b)(27).

(e) if ASA is able to avert a default on a loan by assisting the borrower to consolidate, ASA shall be allowed to receive the payment authorized by 34 C.F.R. §682.401(b)(27) on the same terms as a post-default consolidation.

5. The Department and ASA agree that it is vital that ASA continues its efforts to ensure that it reports accurate information to the Department. To provide ASA with an incentive to continue this process, the Portfolio Wellness Fee to be paid by the Department to ASA under Section 4(b) of this VFA shall be reduced if ASA does not meet the graduated reporting performance standards included in this Section. ASA's reporting performance shall be required to meet the standards listed in this Section for each Federal fiscal year between FY 2001 and FY 2003 in each of the four areas below. The standards reflected below are the variances between the information reported by ASA to the Department's National Student Loan Data System (NSLDS) or any successor system and the data reported by ASA on the Department's Forms 1189, 1130, Forms 2000 or any successor form. The standards are:

(a) Collections – ASA's performance in reporting the amount of collections on defaulted loans shall be calculated using the following weights for reporting of principal amount collected, interest collected and amount collected by federal tax refund offset;

Principal – 45%
Interest – 20%
Tax refund – 35%

The weighted performance targets for each year shall be:

FY 2001 – 9%
FY 2002 – 7%
FY 2003 – 6%

For each incremental 10% variance from the performance target for each year, ASA's Portfolio Wellness Fee for that fiscal year shall be reduced by .66 basis points.

(b) Claims -- ASA's performance in reporting the dollar value of claims it has paid in various categories shall be calculated using the following weights for the reporting of default claims paid, bankruptcy claims paid and death and disability discharge claims paid:

Defaults – 95%
Death and Disability – 5%

The weighted performance targets for each year shall be:

FY 2001 – 8%
FY 2002 – 7%
FY 2003 – 6%

For each incremental 10% variance from the performance target for each year, ASA's Portfolio Wellness Fee for that fiscal year shall be reduced by .66 basis points.

(c.) Reported Loan Guarantees -- ASA's performance in reporting the dollar value of loans it has guaranteed shall be evaluated by the variance in its reporting of net guarantees.

The weighted performance targets for each year shall be:

FY 2001 – 3.0%
FY 2002 – 2.3%
FY 2003 – 1.7%

For each incremental 10% variance from the performance target for each year, ASA's Portfolio Wellness Fee for that fiscal year shall be reduced by .66 basis points.

(d.) Reported Loans Paid in Full – ASA's performance in reporting the dollar value of loans paid in full shall be evaluated by the variance in its reporting of the dollar volume of the amount of loans paid in full each fiscal year.

The weighted performance targets for each year shall be:

FY 2001 – 80.0%
FY 2002 – 40.0%
FY 2003 – 20.0%

For each incremental 10% variance from the performance target for each year, ASA's Portfolio Wellness Fee for that fiscal year shall be reduced by 1.33 basis points.

6. On a monthly basis, ASA shall calculate the monies due to either party under this VFA. Within 45 days of the close of the month, ASA shall provide the Department with an accounting and shall remit to the Department the remainder, if any, of the following formula:

All amounts collected by ASA on defaulted FFEL Program loans minus

Loan Processing and Issuance Fees due to ASA
Portfolio Wellness Fees due to ASA
Collection Retention on regular default collection
Consolidation and Rehabilitation Retention

If this calculation results in a balance due to ASA in any month, the Department shall promptly remit such balance to ASA. Any balance not remitted by the following month will be incorporated in the above calculation.

All monies payable to ASA shall be based on information provided by ASA to the Department on NSLDS, as reconciled and adjusted between the Department and ASA as needed.

7. (a) The parties agree that one of the goals of this VFA is to test an alternative to the guaranty agency financing model currently used under the HEA. To achieve that goal, ASA agrees to deposit all of the cash and cash equivalents included in its designated Federal Fund under §422A of the HEA (except as set forth below), including any funds transferred from the Federal Fund to the Operating Fund under §422A(f)(1) of the HEA, in an escrow account established by ASA and the Department (Federal Fund Escrow).

(b) In addition, ASA shall deposit into appropriate separate accounts the funds that it must return to the Department of Treasury under §§422(h) of the HEA. The terms of such escrow account shall provide that the interest from such account shall be paid to the account of ASA and ASA may use these funds for default aversion and reduction purposes.
8. The parties acknowledge that the return of Federal Funds under this VFA will require an alternative mechanism to pay default and other claims by lenders on FFEL Program loans. To replace the Federal Fund for the purpose of paying claims, the Department agrees to establish a process under which ASA will calculate and request from the Department the total amount of funds needed to pay claims on a weekly or other basis agreed to by the parties. The Department agrees to pay amounts requested by ASA within 30 days of receipt of the request. If ASA has not received payment from the Department within 30 days of the Department's receipt of the request, ASA may withdraw the amount of funds needed to pay the claims from the Federal Fund Escrow established under Section 7(a) of this VFA. If ASA has needed to withdraw funds from the Federal Fund Escrow under this Section, the Department will deposit into the Federal Fund Escrow an amount equal to the funds properly withdrawn by ASA.
9. To allow ASA to perform the activities described in this VFA and under the authority of §428A of the HEA, the Department agrees to waive or modify the following requirements of the HEA or the Department's regulations:
 - (a) The Department waives §422A(c) and (d) of the HEA and 34 C.F.R. §§682.410(a)(1) and (2) and 682.419(a), (b), (c) and (e), which govern the use of the guaranty agency's Federal Fund. These provisions are being waived since ASA is depositing the Federal Fund into an escrow account with limited use as provided under this VFA.
 - (b) The Department waives §§422B(c), 428(l) and 458 of the HEA and 34 C.F.R. §§682.404(i) and (k) and 682.423 to the extent they govern the payments made to

guaranty agencies and to the extent they are inconsistent with the payments provided under this VFA.

(c) The Department waives §428(c)(9) of the HEA and 34 C.F.R. §682.419(e), which require a guaranty agency to maintain a minimum reserve ratio in the Federal Fund.

(d) The Department waives 34 C.F.R. §682.406 to the extent it requires a guaranty agency to meet certain timing requirements to file for reinsurance. The procedures provided under Section 8 of this VFA shall apply.

(e) The Department waives §428(c)(1) of the HEA and 34 C.F.R. §682.404(a) and (b) to the extent those provisions provide for the Department to reimburse ASA for claims paid to lenders. The procedures described in Section 8 of this VFA shall apply.

(f) The Department waives §428(c)(6) of the HEA and 34 C.F.R. §682.404(g)(ii), which govern the guaranty agency's retention of a portion of collections on defaulted loans. ASA shall be allowed to retain the amount described in Section 4(c) of this VFA.

(g) The Department waives the requirements for ASA to respond to default aversion requests by lenders in accordance with 34 C.F.R. §682.404(k)(1) to the extent ASA implements the program described in Section 3(a) of this VFA.

(h) The Department waives the requirements in 34 C.F.R. §682.406(a)(3) for ASA and participating lenders to the extent ASA implements and lenders participate in a program described in Section 3(b) of this VFA.

(i) The Department waives the requirements in §428F(a)(1) of the HEA and 34 C.F.R. §682.405 governing rehabilitation of defaulted loans to the extent ASA implements a program described in Section 3(c) of this VFA.

(j) The Department waives the requirements of 34 C.F.R. §682.410(b)(6) and (7) to the extent ASA implements a program described in Section 3(d) of this VFA; however, ASA shall provide all required opportunities for a borrower to appeal or challenge a debt as provided in those regulations.

10. (a) This VFA shall terminate at midnight on September 30, 2003 unless expressly extended by the parties in writing. To the extent authorized by law, this agreement will thereafter renew annually on its anniversary date for an additional one-year period unless terminated as provided below.

(b) Prior to the expiration date established by Section 10(a), either party may terminate this VFA by giving written notice of the termination to the other party no less than 90 calendar days before the date of termination.

(c) If this VFA is terminated under this Section, ASA shall remain a guaranty agency in the FFEL Program under the Existing Agreements and in accordance with the HEA and the Department's regulations as of the time of termination. In the event this VFA is

terminated by either party for any reason, the full amount of the Federal Fund Escrow established under Section 8 of this VFA shall revert to ASA on the effective date of the termination. However, prior to the return of the funds to ASA, the Department shall be entitled to withdraw the amount of any funds owed by ASA to the Department or the United States under the HEA.

11. ASA and the Department agree to discuss and negotiate a plan to evaluate the success of the implementation of the terms of this VFA. ASA shall provide the Department with reports or information that the Department believes are necessary for the Department to report on the progress of the VFA.

12. (a) The terms of this VFA shall be considered to amend the Existing Agreements between the parties. If a term of this VFA conflicts with the terms of the Existing Agreements between the parties, the terms of this VFA are controlling unless prohibited by law. Upon expiration or termination of this VFA, the Existing Agreements between the Department and ASA shall be reinstated in effect, to the extent those agreements are consistent with the HEA and the Department's regulations.

(b) This VFA is subject to and to the extent necessary shall be deemed to be modified by any changes to the HEA, other applicable laws and the Department's regulations in accordance with the effective date of such change. If ASA believes that any change to the HEA or the Department's regulations would cause a material change to the parties' ability to carry out their obligations under this VFA, ASA may ask the Department to waive the statutory or regulatory provision. The Department may agree to waive any such provision if permitted by law.

(c) ASA may subcontract any of its obligations under this VFA. However, ASA is responsible for ensuring compliance with the terms of this VFA and will be liable for the actions of its subcontractors to the same extent as provided under current law and regulation.

(d) Nothing set forth herein restricts the Department's remedies under federal or state law for breach of this VFA, or in any way restricts any other administrative, civil or criminal action that could be brought by the Department or the United States against ASA for violation of this VFA or any statute or regulation.

(e) Notices regarding this VFA shall be sent, certified mail, return receipt requested, to the Department at the following address:

General Manager
Financial Partners Channel
Student Financial Assistance
U.S. Department of Education
ROB-3, Room 4616
400 Maryland Avenue, S.W.
Washington, D.C. 20202

With a copy to:

Division of Postsecondary Education
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., S.W., Room 6E301
Washington, D.C. 20202

And to ASA at the following address:

American Student Assistance
330 Stuart Street
Boston, MA 02116-5292
Attn: General Counsel

IN WITNESS WHEREOF, this VFA has been executed by authorized officials of ASA and of the Department.

Date American Student Assistance

Authorized Official

Title

Date U.S. Department of Education

Authorized Official

Title