

**VOLUNTARY FLEXIBLE AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF EDUCATION
AND
CALIFORNIA STUDENT AID COMMISSION**

This Voluntary Flexible Agreement (VFA) is between the United States Department of Education (Department) and the California Student Aid Commission (CSAC) and dated as of January , 2001.

WHEREAS, CSAC 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, CSAC and the Department are currently parties to certain Agreements governing CSAC's participation as a guaranty agency in the FFEL Program, including the Agreement for Federal Reinsurance of Loans pursuant to §428(c) of the HEA, dated October 25, 1978 (Existing Agreements); and

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

WHEREAS, CSAC wishes to institute new efforts to improve outreach services, default aversion efforts and debt collection and loan servicing and to minimize defaults in the FFEL Program; and

WHEREAS, the Department and CSAC want to use this VFA to allow CSAC to develop new processes, policies and procedures and undertake certain efforts in connection with FFEL Program loans it holds or insures 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 VFA.
2. CSAC agrees to undertake appropriate activities to investigate, test and, if appropriate, implement the following activities to improve services to borrowers and students. CSAC shall periodically report to the Department the results and progress of its activities under this section and its plans for future implementation.

- A. Outreach Services. CSAC shall develop and implement early intervention, debt management and scholarship programs designed to promote educational opportunity, responsible borrowing and default prevention. These efforts shall supplement CSAC's current programs in this area.

- B. Default Aversion Laboratory.
 - 1) Delinquency Servicing. CSAC shall work with one or more lenders and servicers to promote the use of a single entity to perform delinquency servicing now being performed by both the lender and CSAC simultaneously. The single entity performing such delinquency servicing may be either CSAC, an agent to CSAC, or the lender, as determined by CSAC and the lender and with prior notice to the Department. CSAC shall determine whether focusing contact to a particular borrower through one source reduces the rate of delinquency and default.

 - 2) Early Withdrawal Counseling. CSAC shall develop and implement a comprehensive early withdrawal program on a selected basis that is designed to avert defaults by borrowers who withdraw from school prior to completing the educational program. Under the counseling program, CSAC or its agent shall contact borrowers upon their withdrawal from school and provide appropriate information about debt management, repayment options, employment counseling and other services. This counseling will be in addition to and not in place of counseling provided by the school.

 - 3) Consolidation. CSAC shall identify borrowers at high risk of default and, in cooperation with lenders, facilitate consolidation of such borrowers' loans to the extent that consolidation will help such borrowers to avoid default. CSAC and the Department agree to work together to improve communication and information sharing between CSAC and the William D. Ford Direct Loan Program to improve the process for those borrowers who wish to consolidate in the Direct Loan Program.

- C. Claims and Post-Default Servicing.
 - 1) Collection Servicing. CSAC shall develop and implement performance-based collections standards for its internal and external collectors designed to measurably increase collections.

 - 2) Inter-Agency Transfer of Defaulted Accounts. CSAC shall seek to exchange defaulted accounts with other guaranty agencies according to established exchange criteria designed to increase the potential for collection due to factors such as geographic location or state-specific enforcement authority. CSAC shall provide a copy of the exchange criteria to the Department prior to contacting the other guaranty agencies.

CSAC acknowledges that it cannot suggest that another guaranty agency is required to transfer accounts under this VFA.

- 3) Streamlined Program Reviews. CSAC shall seek to reduce the number of school and lender program reviews by establishing cooperative agreements with other guaranty agencies to eliminate duplicate reviews within the review cycle.

3. The Department agrees to waive enforcement of regulations and rules to the extent the Department determines such a waiver is necessary to allow CSAC to perform the above activities. Specifically, the Department agrees that:

- A. CSAC may use earnings from the funds maintained in the Restricted Account established by CSAC under §422(h)(4) of the HEA to perform the activities listed in Section 2 during the term of this VFA.
- B. For each borrower receiving early withdrawal counseling, CSAC may transfer the default aversion fee authorized by 34 C.F.R. §682.404(k) at the time the counseling is begun instead of at the time of the lender's request for assistance as provided by the regulations. Except for this modification, CSAC must calculate the default aversion fee payment in accordance with 34 C.F.R. §682.404(k). CSAC shall not receive a default aversion fee payment under 34 C.F.R. §682.404(k) on any loan for which it receives a payment based on early withdrawal counseling under this paragraph.
- C. CSAC shall be paid an amount equal to 50% of the savings in claim payments resulting from its default aversion activities under this VFA. The amount of savings shall be defined as the difference between CSAC's actual annual default rate and 3.0%. The actual annual default rate is calculated by dividing the total dollars paid in default claims for a fiscal year by the total dollars in loans in repayment as of the end of the prior fiscal year and shall be calculated using the same methodology as the "default trigger rate" calculated under 34 C.F.R. §682.404(b). Such payment shall be paid or credited to CSAC within 90 days of the end of each fiscal year.
- D. CSAC shall be authorized to retain an additional percent of its collection recoveries based on an improvement in its collection recovery rate to the extent it exceeds the national average. The collection recovery rate is defined as the total dollar amount of principal and interest collected on defaulted loans in a fiscal year divided by the total principal and interest on accounts that are available for collection as of the end of the prior fiscal year. The calculation of collection recoveries (the numerator) shall include collections from all sources, including collections on loans assigned to the Department for collection. The calculation of the principal and interest on accounts that are available for collection as of the end of the prior fiscal year (the denominator) shall include the balance of principal and interest at the end of the prior fiscal year on loans held by CSAC or assigned

to the Department by CSAC. The Department shall identify the balance of principal and interest as of the end of the prior fiscal year and provide information on the collection recoveries on accounts previously guaranteed by CSAC and which have been assigned to the Department for collection. CSAC's actual collection recovery rate calculated for the 2000 federal fiscal year shall serve as the base for evaluating collection recovery rate improvement in the remaining fiscal years covered by this agreement. However, CSAC will not be entitled to retain an additional amount of collections unless CSAC's collection recovery rate exceeds the national average recovery rate as calculated on an identical basis by the Department for all guaranty agencies. The authorized collection retention percent shall be the amounts authorized under current law, plus an increase equal to the percent improvement in the collection recovery rate.

- E. CSAC may use up to 25% of the funds available under this VFA for Outreach Services under Section 2.A. of this VFA.
- F. To the extent CSAC or its agent acts as the sole delinquency servicer for a lender or lenders, the Department agrees to waive the requirements for those lenders to collect those loans in accordance with 34 C.F.R. §682.411. As a condition of this waiver, CSAC agrees that it will ensure that the collection efforts will include sufficient collection efforts to preclude a finding of improper servicing or collection with respect to appeals of cohort default rates under 34 C.F.R. §668.17 or its successor regulations.
- G. Claim filing requirements under 34 C.F.R. §682.406(a)(3) are waived with respect to loans serviced under Section 2.B.2 of this VFA.
- H. The due diligence requirements in 34 C.F.R. §§682.410(b)(6) and 682.410(b)(7) are waived provided that CSAC's collection performance meets or exceeds its current rate of recovery and CSAC performs the following minimum activities:
 - 1) Send a written notice as described in 34 C.F.R. §682.410 (b)(5)(vi) promptly after payment of a default claim on the loan;
 - 2) Fulfill the requirements for offset of federal and state income tax refunds;
 - 3) Fulfill the requirements for subrogation of the loan to the U.S. Department of Education for collection;
 - 4) Fulfill the requirements for reporting to credit bureaus, except that the reporting to credit bureaus may be earlier than prescribed in 34 C.F.R. 682.410 (b)(5) if the account is assigned to a collection agency in lieu of the collection efforts in 34 C.F.R. 682.410 (b)(6)(iii); however, CSAC will provide all due process and hearing rights to the borrower in accordance with that section.

- I. CSAC may transfer defaulted loans to and from other guarantors without prior approval of the Secretary provided such transfers are pursuant to the established exchange criteria.
- J. The requirement for program reviews under 34 C.F.R. §682.410(c) is waived to the extent that a required review of a school or lender has been conducted by another guaranty agency or the Department in the review cycle and CSAC has determined that such review was conducted in accordance with CSAC standards.

4. Both parties agree that the purpose of this VFA is to promote activities that will benefit the FFEL Program and will either be cost-neutral or will result in savings to the Department. Both parties reserve the right to modify this VFA to the extent necessary to achieve this purpose.

5. Termination. Either party may terminate this VFA by providing written notice of the termination to the other party no less than 90 calendar days before the effective date of termination. If, at the time of termination, CSAC would be entitled to payment under this VFA except for the timing of the termination, CSAC shall receive a pro rata share of such payment.

6. Evaluation. – The Department and CSAC will work together to monitor performance of the activities detailed in this VFA to ensure that the objectives of this VFA are met. At the request of the Department, CSAC will provide timely and auditable reports regarding performance in delinquency prevention, default prevention, default recoveries, delinquency rates and recovery rates.

7. Additional Provisions.

(a) The terms of this VFA shall be considered to amend the Existing Agreements between the parties. If the terms of this VFA conflict with the terms of the Existing Agreements, the terms of this VFA are controlling unless prohibited by law. Upon termination of this VFA, the Existing Agreements between the Department and CSAC 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 CSAC 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, CSAC 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) CSAC may subcontract any of its obligations under this VFA. However, CSAC is responsible for ensuring compliance with the terms of this VFA and will be liable for the actions of its subcontractors.

(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 CSAC for violation of this VFA or any statute or regulation.

(d) 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 CSAC at the following address:

California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670
Attn: General Counsel

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

_____ California Student Aid Commission
Date

Authorized Official

Title

_____ U.S. Department of Education
Date

Authorized Official

Title