

**VOLUNTARY FLEXIBLE AGREEMENT  
BETWEEN  
THE UNITED STATES DEPARTMENT OF EDUCATION  
AND  
GREAT LAKES HIGHER EDUCATION GUARANTY CORPORATION**

This Voluntary Flexible Agreement (VFA) is between the United States Department of Education (Department) and the Great Lakes Higher Education Guaranty Corporation (Great Lakes) and is effective as of October 1, 2000.

WHEREAS, Great Lakes 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, Great Lakes and the Department are currently parties to certain Agreements governing Great Lakes' 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, as amended, dated May 13, 1977 (Existing Agreements) and which the parties wish to amend in whole or in part as required to implement this VFA; and

WHEREAS, the Department and Great Lakes have agreed to utilize the authority provided by §428A of the HEA, 20 U.S.C. §1078-1, to expand Great Lakes' Default Aversion Pilot program and to pilot a guaranty agency "fee for service" based structure as an alternative to the guaranty agency financing model currently utilized under the HEA; and

WHEREAS, the Department and Great Lakes are willing to amend their prior agreements to achieve the benefits to borrowers, schools, lenders and the Federal Government that are expected from providing additional incentives for improved delinquency and default aversion activity based on the parties' experience during fiscal years 1997 and 1998 in Great Lakes' default aversion pilot; and

WHEREAS, the Department has agreed to provide certain waivers of statutory and regulatory requirements as authorized by §428A of the HEA and to make payments to Great Lakes to provide incentives for enhanced and expanded delinquency and default aversion activities consistent with the performance based "fee for service" structure established by this agreement; and,

WHEREAS, in accordance with §428A(a)(4)(c) and §428(b)(2)(D) the "fee for service" payment matrix hereinafter provided for will provide the standard for measuring successful performance and the risks and rewards attendant thereon by tying earnings directly to default aversion levels obtained and thereby align the interests of both Great Lakes and the Department as well as schools, lenders and borrowers;

NOW THEREFORE, the parties to this Agreement agree as follows:

1. Performance Based Fee for Service. In lieu of the payments currently received by Great Lakes as a guaranty agency in the FFEL Program (including default aversion fees, account

maintenance fees, loan processing and issuance fees, and default collection retention), Great Lakes shall receive a single basis point denominated fee for all guaranty agency services provided under this VFA and the HEA and the Department's implementing regulations. The Department shall pay the fee in accordance with the fee matrix represented in Table I on the following page. In calculating the fee due and payable to Great Lakes, the following definitions and methodology shall apply:

(a) The delinquency cure rate (the "Cure Rate") shall be the resultant quotient of the number of cures secured by Great Lakes during the measurement period (month, quarter or year) when divided by the sum of the number of cures and the number of defaults that occurred during any such measurement period. A delinquent account that has been referred to Great Lakes for default aversion assistance by the lender, or its contract servicer, shall be considered as cured for purposes of this calculation only if the account was 60 or more days delinquent and becomes less than 30 days delinquent as a result of any appropriate combination of the following:

(i) the receipt of sufficient payments from the borrower or on the borrower's behalf;

(ii) the application of deferment periods to the borrower's account in accordance with the HEA and the Department's regulations;

(iii) the application of forbearance periods to the borrower's account in accordance with the HEA and the Department's regulations.

(b) The Department agrees that, for the period in which this VFA is in effect, it will pay Great Lakes a performance based fee for service to be computed not less frequently than on a calendar quarter basis equivalent to the product of original principal balance of open loans, as defined in this Agreement, times the applicable performance based fee in accordance with the methodology described below.

(i) To ensure the timely availability of an auditable original principal balance of open loans amount for the calculation required by this section, the parties agree to use the Account Maintenance Fee (AMF) definition for the original principal balance of open loans calculation (Amount of Guarantee minus the Amount of Cancellation as defined in the National Student Loan Data System Technical Update GA-2000-001). The original principal balance of open loans is currently reported to guaranty agencies by ED in positions 82 through 96 of the GA AMF Trailer Record.

(ii) For each performance based fee for service calculation, the applicable performance based fee for service rate shall be the rate listed in Table I under the furthest column to the right whose threshold cure rate has been attained through the measurement period multiplied by the relationship that the number of months in the measurement period bears to twelve months.

<i>Example: Original Principal Balance of Open Loans at September 30, 2000</i>	<i>\$15,000,000,000</i>
<i>Cure Rate for Quarter ended December 31, 2000</i>	<i>80%</i>
<i>Performance Based Fee from Table I</i>	<i>0.274%</i>

*Fee for Service: \$15,000,000,000 X .00274 X .25(one quarter) = \$10,275,000*

**Table I**  
**Great Lakes Higher Education Guaranty Corporation**  
**VFA Proposed Rate Structure**  
**Fiscal Years 2001, 2002 and 2003 Projections**

	@ 74%	@ 76%	@ 78%	@ 80%	@ 82%	@ 84%	@ 86%	@ 88%	@ 90%	@ 92%	@ 94%
<b>Pre-Collection Activities</b>											
Loan Processing/Issuance Fee	0.065%	0.065%	0.065%	0.065%	0.065%	0.065%	0.065%	0.065%	0.065%	0.065%	0.065%
Account Maintenance Fees	0.100%	0.100%	0.100%	0.100%	0.100%	0.100%	0.100%	0.100%	0.100%	0.100%	0.100%
Default Aversion Fees											
@ 74% Cure Rate	0.094%										
@ 76% Cure Rate		0.099%									
@ 78% Cure Rate			0.104%								
@ 80% Cure Rate				0.109%							
@ 82% Cure Rate					0.114%						
@ 84% Cure Rate						0.119%					
@ 86% Cure Rate							0.124%				
@ 88% Cure Rate								0.129%			
@ 90% Cure Rate									0.134%		
@ 92% Cure Rate										0.139%	
@ 94% Cure Rate											0.144%
	0.259%	0.264%	0.269%	0.274%	0.279%	0.284%	0.289%	0.294%	0.299%	0.304%	0.309%
<b>Fiscal 2001 Revenue:</b>	38,171,450	38,908,351	39,645,251	40,382,152	41,119,053	41,855,953	42,592,854	43,329,754	44,066,655	44,803,555	45,540,456
<b>Fiscal 2002 Revenue:</b>	39,466,450	40,228,351	40,990,251	41,752,152	42,514,053	43,275,953	44,037,854	44,799,754	45,561,655	46,323,555	47,085,456
<b>Fiscal 2003 Revenue:</b>	40,761,450	41,548,351	42,335,251	43,122,152	43,909,053	44,695,953	45,482,854	46,269,754	47,056,655	47,843,555	48,630,456

<b>Revenue Equivalency Test-2001:</b>				<b>41,078,500</b>					
<b>Revenue Equivalency Test-2002:</b>			<b>41,572,950</b>						
<b>Revenue Equivalency Test-2003:</b>			<b>42,571,350</b>						

(c) The parties agree that, to minimize disruption to existing Department processes, the equivalent to the single performance based fee shall, until the parties agree otherwise through an amendment to this Agreement, be remitted to Great Lakes by the Department as follows:

(i) An amount equivalent to the loan processing and issuance fee shall be calculated and remitted to Great Lakes in accordance with standard Department practice.

(ii) An amount equivalent to the account maintenance fee shall be calculated and remitted to Great Lakes in accordance with standard Department practice.

(iii) The amount by which the performance based fee for service calculated in accordance with the provisions of Section (1)(b) of this Agreement exceeds the amounts paid under Section (1)(c)(i) and (ii) above shall be invoiced by Great Lakes. The Department agrees to pay such invoices within 30 days of receipt. If Great Lakes has not received payment from the Department within 30 days of the Department's receipt of the request, Great Lakes may withdraw the amount of funds needed to pay such outstanding invoices from the escrow account established under Section 2(a) of this VFA. If Great Lakes has needed to withdraw funds from the escrow account under this Section, the Department will deposit into the escrow account the funds that would otherwise be due to Great Lakes.

(iv) While payments are made to Great Lakes under this Section (1)(c) or another agreed upon remittance process agreed to by the parties in writing, the Department shall be credited with 100% of all collection recoveries secured by Great Lakes and/or its agents less Great Lakes' actual external and internal post-default collection costs associated with such recoveries.

(v) While payments are made to Great Lakes under this Section (1)(c) or another agreed upon remittance process, effective October 1, 2000, insurance premiums, if collected, shall be deposited to the Great Lakes Federal Fund described in Section 2(a) of this VFA. Great Lakes shall remit such amounts as may accumulate in the Federal Fund from Insurance Fee charges on a regular basis.

Notwithstanding the actual cure rate as determined for any measurement period under this VFA, the performance based fee for service payable to Great Lakes under this VFA shall not be less than 25.9 basis points and not more than 31.9 basis points.

## 2. Return of Federal Funds.

(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, Great Lakes agrees to deposit all of the cash and cash equivalents included in its designated Federal Fund under §422A of the HEA in an escrow account established by Great Lakes on behalf of the Department. Great Lakes shall assure that the Department has full and complete access to the account to make deposits and withdrawals as required by law and this VFA. Great Lakes shall also deposit in the escrow account the repayment of the funds it transferred as a working capital reserve from the Federal Fund to the Operating Fund under §422A(f)(1) of the HEA.

(b) Prior to depositing these funds into the designated escrow account, Great Lakes shall deposit into appropriate separate accounts the funds that it must return to the Department of Treasury under §§422(h) and (i) of the HEA.

3. Property. Great Lakes has developed or otherwise acquired intangible assets comprised of intellectual property represented by computer software, tradenames, and trademarks in connection with and to support Great Lakes' obligations and duties as a guaranty agency under the HEA and the Department's regulations. Great Lakes believes that the Department's ownership interest, if any, in these assets has been extinguished or become de minimus due to development of the property paid for by Great Lakes' private funds and/or depreciation. The Department has not made an independent determination of the ownership interest, if any, that it may have in this property. The Department agrees that it will not assert dominion or control over this property or revenues derived therefrom during the term of this VFA. The Department also agrees that once any ownership interest it may have in the property is determined, the Department will accept payment from Great Lakes and it will not assert any dominion or control over the property or the revenues derived therefrom.

4. Payment of claims. The parties acknowledge that the return of Federal Funds under Section 2 of this VFA will leave Great Lakes without the funds 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 Great Lakes 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 the amount requested by Great Lakes within 30 days of receipt of the request. If Great Lakes has not received payment from the Department within 30 days of the Department's receipt of the request, Great Lakes may withdraw the amount of funds needed to pay the claims from the escrow account established under Section 2(a) of this VFA. If Great Lakes has needed to withdraw funds from the escrow account under this Section, the Department will deposit into the escrow account the funds that would otherwise be due to Great Lakes.

5. Waivers. The Department hereby waives the provisions of the HEA and the regulations enumerated in this Section 5 in accordance with the authority of §428A of the HEA. These waivers shall be in full force and effect for the entire period of the VFA unless specifically revoked in writing by the Department. In the event of revocation that Great Lakes believes would cause a material change to the parties' ability to carry out their obligations under this VFA, Great Lakes may terminate the VFA within 90 days of the date of the revocation and in accordance with Section 6.

(a) The Department waives §422A(c) and (d) of the HEA and 34 C.F.R. §682.410(a)(1) and (2), which govern the use of the guaranty agency's Federal Fund. These provisions are being waived since Great Lakes is depositing the Federal Fund into an escrow account.

(b) The Department waives §422B(c) and (d) of the HEA and 34 C.F.R. §682.419(b)(6) and 682.423 to the extent they govern the payments made to guaranty agencies and to the extent that 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. §682.420 to the extent it is inconsistent with Section 3 of this VFA in regard to the Department's ownership interest in certain intellectual property held by Great Lakes.

(e) The Department waives the requirements of 34 C.F.R. §682.410(b)(6) and (7) except that Great Lakes will provide all required opportunities for a borrower to appeal or challenge a debt as provided in those regulations.

(f) 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 4 of this Agreement shall apply.

(g) The Department waives §428(c)(2)(A) of the HEA and 34 C.F.R Part 682 - Appendix D to the extent needed to allow Great Lakes to undertake a sample based claims review process of lender claim payments which does not entail post-claims payment adjustments to the lender claims previously paid under such a process. Great Lakes may elect to implement such a practice by precertifying compliant lenders and/or lender servicers who have implemented the industry standard Common Claim Initiative to submit claims to Great Lakes and who submit their requests for default aversion assistance by the 70<sup>th</sup> day of delinquency. If Great Lakes elects to implement this practice, it shall provide a full explanation of its plans to the Department prior to implementation.

(h) The Department waives the requirements of 34 C.F.R §682.411 and relevant portions of 34 C.F.R Part 682 - Appendix D to the extent necessary to allow Great Lakes to eliminate duplicate collection efforts by lenders, lender servicers and the guaranty agency for each year following the year in which Great Lakes exceeds an average cure rate, as defined herein, in excess of 84%. In implementing this practice, Great Lakes will ensure that all loans are subject to servicing and collection efforts that meet or exceed the standards in 34 C.F.R. §668.17(h)(3)(vii) or any successor regulation which establishes criteria for improper servicing or collection appeals for sanctions against schools based on cohort default rates. Prior to implementing the changed procedures authorized by this waiver, Great Lakes will notify the Department of the collection efforts that will be eliminated.

(i) The Department waives the applicability of the A-133 audit requirement under 34 C.F.R §682.410(b)(1)(ii) as to the program requirements that have been waived in this Section 5.

## 6. Termination.

(a) Except as provided in Section 3, either party may terminate this VFA effective October 1, 2001 or any subsequent October 1, by providing written notice of the termination to the other party no less than 90 calendar days before that date. If no such notice is provided, the VFA will automatically renew for successive one-year periods until such notice is given.

(b) If the VFA is terminated by either party for any reason, the full amount of Federal Funds returned to the Department on an accelerated basis pursuant to the provisions of Section 2(a) of this VFA shall be promptly remitted to Great Lakes along with the \$5 million previously placed on deposit with the Department by Great Lakes in connection with the default aversion pilot conducted by the parties during fiscal years 1997 and 1998. However, the funds to be

returned to Great Lakes shall be reduced by the amount of any funds required to be returned by Great Lakes to the Department under the HEA.

7. Evaluation. Great Lakes and the Department agree to discuss and negotiate a plan to evaluate the success of the implementation of the terms of this VFA. The parties agree that the “fee for service” payment system established under this VFA includes standards for measuring successful performance and, by tying earnings to default aversion levels, establishes risks and rewards for Great Lakes’ success in meeting those standards. The parties intend that the evaluation process to be developed will rely on these standards and will ensure that the program established under this VFA is consistent with the goals of the parties and in the best interests of schools, lenders and borrowers.

8. Additional Provisions.

(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, 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 Great Lakes shall be reinstated.

(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 Great Lakes 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, Great Lakes may ask the Department to waive the statutory or regulatory provision. If the Department decides not to grant the waiver within 60 days of the date of Great Lakes’ written request for the waiver, Great Lakes may terminate the VFA in accordance with Section 6 and without reference to the October 1 date referenced in that paragraph.

(c) Great Lakes may subcontract any of its obligations under this VFA. However, Great Lakes is responsible for ensuring compliance with the terms of this VFA and will be liable for the actions of its subcontractors. Notwithstanding 34 C.F.R. §682.418(a)(1), Great Lakes may pay for goods, property or services provided by an affiliated organization in furtherance of this VFA at an amount in excess of the affiliated organization's actual cost as long as such excess is not paid by federal funds.

(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 Great Lakes 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 Great Lakes at the following address:

Great Lakes Higher Education Guaranty Corporation  
2401 International Lane  
Madison, WI 53704  
Attn: General Counsel

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

\_\_\_\_\_  
Date

Great Lakes Higher Education Guaranty Corporation

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

U.S. Department of Education

\_\_\_\_\_  
Richard W. Riley

\_\_\_\_\_  
Secretary  
Title