

**VOLUNTARY FLEXIBLE AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF EDUCATION
AND
TEXAS GUARANTEED STUDENT LOAN CORPORATION**

This Voluntary Flexible Agreement (VFA) is between the United States Department of Education (Department) and the Texas Guaranteed Student Loan Corporation (TG) and dated as of _____, 2001.

WHEREAS, TG 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, TG and the Department are currently parties to certain agreements governing TG'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 November 21, 1980 (Existing Agreements) and which the parties wish to amend, in whole or in part, as required to implement this VFA; and

WHEREAS, §428A of the HEA provides that the Department may enter into a VFA with a guaranty agency; and

WHEREAS, the Department and TG desire to enter into a VFA amending the terms of the Existing Agreements; and

WHEREAS, TG has agreed to modify its financial model and undertake certain efforts in connection with FFEL 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. **Existing Agreements.** All terms and conditions of the Existing Agreements remain in full force and effect except as provided in this VFA.
2. **Compensation.** As a means of testing new ways of providing funds to guaranty agencies for fulfilling their duties in the FFEL Program, TG and the Department agree that TG shall receive funds from the Department according to the following rules:
 - (a) **Loan Processing and Issuance Fee (LPIF)** – The Department shall pay TG a LPIF on a quarterly basis and in accordance with §428(f) of the HEA and 34 C.F.R. §682.404(j). To ensure the timely availability of an auditable amount of

guaranteed loans disbursed, for purposes of this calculation, the parties agree to use the guaranteed and disbursed loan information reported by TG and maintained on the Department's National Student Loan Data System (NSLDS).

- (b) **Account Maintenance Fee (AMF)** – The Department shall pay TG an AMF of 0.10 percent of the original principal balance of TG insured loans outstanding as of the end of the federal fiscal year (hereafter “federal fiscal year end”) in accordance with §458 of the HEA and 34 C.F.R. §682.404(i). The Department shall pay AMF quarterly. To ensure the timely availability of an auditable amount of guaranteed loans outstanding, for purposes of this calculation, the parties agree to use the guaranteed loan information reported by TG and maintained on NSLDS. The calculation of the amount of guaranteed loans outstanding shall only include loans with valid TG guarantees on which there is a balance outstanding as of the end of the applicable calculation period and shall be net of refunds and cancellations applied to an outstanding account through the end of the relevant period.
- (c) **Delinquency Prevention Fee (DPF)** – The Department shall pay TG a fee for delinquency prevention. The fee will be variable (net back) based on an incremental decrease in the dollar amount of Default Aversion Assistance Requests (DARs) as a percentage of the dollar amount of loans in repayment as of the federal fiscal year end prior to the year (hereafter “prior federal fiscal year end”) in which the calculation is made. The Department shall pay the DPF monthly at the annualized performance rate which shall be computed by dividing the dollar amount of annualized, cumulative DARs by the amount of prior federal fiscal year end “Loans in Repayment” as reported on the prior federal fiscal year end Form 2000, lines AR-1 through AR-14. The DPF shall be paid at the following rates based on the formula in this Section:

<u>Calculation Percentage</u>	<u>Fee</u>
30% and above	0.05%
29-29.99%	0.08%
28-28.99%	0.10%
0-27.99%	0.12%

The fee calculated under this Section will be multiplied against the dollar amount of loans in repayment on which TG has not received a default aversion request from the lender.

- (d) **Default Aversion Fee (DAF)** – The Department shall pay TG a DAF on a monthly basis. A base fee of one and one-quarter percent of DAR principal and interest shall be earned in the month the DAR is received by TG subject to a variable, performance-based fee increase in the claim filing deadline month in which the fee rate paid on DARs increases (net back) at certain success rate performance thresholds. Performance shall be calculated by dividing the total

dollar amount of DARs that do not have a default claim filed before a given month's claim filing deadline (plus any claim recalls) by the original total dollar amount of DARs for the respective month. This calculation is commonly referred to as the "cure rate." TG will refund the total DAF received on any loan that later defaults. TG shall re-bill for DAF in the event of a recurring delinquency, but no more frequently than once every 12 months. TG may set a mandatory pre-claim DAR filing window for lenders at 60 days with an extra five days for mailing time.

The DAF will be paid under the following schedule based on TG's performance rate:

<u>Performance Rate</u>	<u>Fee</u>
0-87.99%	1.25%
88-88.99%	2.00%
89-89.99%	2.50%
90-91.99%	3.00%
92% and up	4.00%

- (e) **Collections Fee** – TG's collections fee (net back) shall be on a graduated scale based on the rate at which it recovers on its defaulted loan portfolio. TG's collection fee shall be calculated by annualizing monthly collections as reported on the monthly Form 2000, the sum of line MR-10-A (Rehabilitated Loans), plus line MR-11-A (FFEL Consolidation-Principal and Interest), plus line MR-11-B (FFEL Consolidation-Other Charges), plus line MR-12-A (AWG-Total Collected), plus line MR-13-A (Default Collections-Total Collected), plus line MR-17 (Treasury Offset), plus line MR-19 (Treasury Offset Reversals), plus line MR-27 (Default FFEL Consolidation by Direct Loan), divided by the beginning of the year default portfolio calculated from prior federal fiscal year end Form 2000 lines MR-33 through MR-40 (Aged Default Receivables). Annual performance for net back adjustment shall be assessed at federal fiscal year end based on the cumulative collected dollars from the monthly Form 2000 sections listed above, divided by the beginning of the year default portfolio. The collections fee schedule is:

<u>Recovery Rate</u>	<u>Fee on Regular Collections</u>	<u>Fee on Rehabilitations/Consolidations</u>
0-21.99%	19.50%	18.50%
22-22.99%	20.50%	19.00%
23-23.99%	21.50%	19.50%
24% and above	23.00%	20.00%

3. **Access to Federal Databases.** The Department agrees to undertake appropriate efforts to provide TG inquiry access to all federal databases it uses to locate delinquent borrowers or collect defaulted student loans, if such access is permitted by law.
4. **Treatment of Federal Funds and Payment of Claims.**
 - (a) TG shall process and pay claims following its customary due diligence review. However, the Department will pay TG 100% of the claim payment amount for all claims paid during the period in which this VFA is effective.
 - (b) 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, TG 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 the Department and TG (Federal Fund Escrow). The funds in the Federal Fund Escrow may only be used in accordance with the terms of this VFA.
 - (c) The parties agree that Section (4)(b) of this VFA does not apply to the funds designated for return to the Department under §422(h) of the HEA. TG agrees to use the interest on the funds designated for return to the Department to provide default prevention efforts including, but not limited to, assistance to Historically Black Colleges and Universities to reduce their cohort default rates as permitted by the HEA.
 - (d) TG will not be required to maintain a minimum reserve level as required by §428(c)(9) of the HEA. TG will only be required to deposit a guarantee fee in the Federal Fund Escrow if it collects a guarantee fee.
 - (e) The parties acknowledge that the return of Federal Funds under this VFA will leave TG 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 parties shall establish a process under which TG will estimate and request from the Department the amount of funds needed to pay claims at least thirty days in advance of their actual claim payment date. The Department shall pay the amount estimated by TG within 30 days of receipt of the request. If TG has not received payment from the Department within 30 days of the Department's receipt of the request, TG may withdraw the amount of funds needed to pay the claims from the Federal Fund Escrow. In the event that TG withdraws funds from the Federal Fund Escrow pursuant to this subsection, the Department will deposit into the Federal Fund Escrow an amount sufficient to replenish the funds withdrawn by TG. TG will reconcile each payment from the Department for purposes of funding claims payments to the related actual claim payment, and adjust for the difference on the following estimate and request from the Department.
5. **Performance Monitoring.** The Department and TG 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, TG will provide timely and auditable reports regarding performance in delinquency prevention, default prevention, default recoveries, delinquency rates and recovery rates.

6. **Additional Activities** – The Department and TG will immediately begin negotiations to possibly add the following additional activities to the activities performed under this VFA:
- (a) litigation against defaulted self-employed borrowers by TG in accordance with appropriate cost/benefit criteria;
 - (b) the use of additional flexibility in regard to compromise settlements and write-offs;
 - (c) the establishment of a cooperative effort between the parties to consult regarding guaranty agency loan collection efforts such as Administrative Wage Garnishment, promotional campaigns, creation of a “Help Desk,” training programs and identification of transferable cost efficiencies;
 - (d) a pilot for TG to keep accounts that would otherwise be assigned to the Department after five years of collection efforts by TG; and
 - (e) electronic exchange mailboxes for certain data exchanges between the parties including Treasury Offset, mandatory assignment, voluntary subrogation and Loan Consolidation processing.

If the parties agree to specific terms for the accomplishment of the additional activities, they will be added to this VFA by means of a written amendment to this VFA.

7. **Waivers.** Under the authority of §428A of the HEA, the Department hereby waives the provisions of the HEA and the regulations listed below:
- (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 TG 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) and (c) 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. §682.406 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 VFA shall apply.
- (e) The Department waives §428(l) of the HEA and 34 C.F.R. §682.404(k) which establish rules governing the payment of the default aversion fee to the extent those provisions are inconsistent with Section 2(d) of this VFA.
- (f) 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 TG for claims paid to lenders at less than 100% as provided in Section 4(a) of this VFA.
- (g) The Department waives the provision in 34 C.F.R. §682.404(k)(1) that prohibits a guaranty agency from restricting a lender's choice of the date on which the lender submits a default aversion assistance request as long as TG complies with Section 2(d) of this VFA.
- (h) The Department waives §428(c)(6) of the HEA and 34 C.F.R. §682.404(g)(1) to the extent those provisions contain rules governing a guaranty agency's retention of a portion of collections on defaulted loans that are inconsistent with Section 2(e) of this VFA.

These waivers shall be in full force and effect for the entire term of this VFA unless specifically revoked in writing by the Department. In the event of a revocation which TG believes would cause a material change to the parties' ability to carry out their obligations under this VFA, TG may terminate the VFA within 90 days of the date of the revocation and in accordance with Section 9.

8. **Implementation Date.** The Department and TG will, within 30 days of the date of this VFA, adjust all accounts between the parties to reflect an implementation of the financial terms of this VFA as of October 1, 2000. The parties agree that such implementation is necessary to ensure an effective implementation of the terms of this VFA during Federal Fiscal Year 2001.
9. **Termination and Restoration.** Except as provided in Section 10(b), 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. In the event this VFA is terminated by either party for any reason, the full amount of the Escrow Account established under Section 4(b) of this Agreement shall revert to TG on the effective date of the termination. Both parties agree to execute any documents and take appropriate steps to effectuate the termination on the effective date. Prior to the return of the Escrow Account to TG, the Department shall be entitled to withdraw the amount of any funds owed by TG to the Department or the United States at the time of termination under any provision of the HEA requiring the return of funds by a guaranty agency.

10. **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 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 TG shall be reinstated.
- (b) This VFA is subject to and, to the extent necessary, shall be deemed modified by any subsequent changes to the HEA, other applicable laws and the Department's regulations in accordance with the effective date of such change. If TG 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, TG may ask the Department to waive the statutory or regulatory provision. The Department may agree to waive any such provision if permitted by law. If the Department decides not to grant the waiver within 60 days of the date of TG's written request for the waiver, TG may terminate this Agreement in accordance with Section 9.
- (c) TG may subcontract any of its obligations under this VFA. However, TG is responsible for ensuring compliance with the terms of this VFA and, as between TG and the Department, will be liable for the actions of its subcontractors.
- (d) Nothing set forth herein restricts either party'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 either party 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 TG at the following address:

Texas Guaranteed Student Loan Corporation
Attention: James Patterson, VP Administration
P.O. Box 201725
Austin, Texas 78720-1725

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

_____ Texas Guaranteed Student Loan Corporation
Date

Authorized Official

Title

_____ U.S. Department of Education
Date

Authorized Official

Title