

Loan Verification Certificate for Special Direct Consolidation Loans
Comments Submitted by Student Loan Servicing Alliance on 12/07/2011
U.S. Department of Education's Responses
December 13, 2011

1. The first paragraph of the form contains the following instruction: "the borrower named in Item 3 has authorized your disclosure of information regarding ALL of the borrower's federal education loan(s) that you hold. List EACH LOAN that you hold in Item 5....." (emphasis added). It is our understanding that the Department of Education's loan servicers will pre-populate the LVC form with the loans that are eligible and that the borrower has selected for "special consolidation." This instruction explicitly countermands the intent of that structure by requiring servicers to add any and all additional loans that they are servicing for that borrower, regardless of whether the loan is eligible for the program or whether the borrower wishes to consolidate the loan. We suggest the following modification:

"As part of the Special Direct Consolidation Loan Application and Promissory Note, the borrower named in Item 3 has authorized your disclosure of information regarding all of the borrower's federal education loan(s) ~~that you hold. List each loan that you hold in~~ listed below in Item 5. For each listed loan, provide the information requested in Items 6 through 19."

ED Response: We have revised the text as recommended, except for the addition of the word "Special" before "Direct Consolidation Loan Application and Promissory Note." There is not a separate promissory note for Special Direct Consolidation Loans. The traditional Direct Consolidation Loan Application and Promissory Note will be used, with an accompanying addendum that explains the terms and conditions of Special Direct Consolidation Loans that differ from the terms and conditions of traditional Direct Consolidation Loans.

2. The instructions for Item 14c require the servicer to "[e]nter the standard repayment plan monthly amount used to determine if the borrower has a partial financial hardship (PFH)." Under the regulations (34 CFR 682.215(a)(4)), there are two possible standard repayment plan monthly amounts that can be used to determine whether the borrower qualifies for PFH: (1) the monthly payment amount to repay the loan over 10 years at the time the borrower initially entered repayment (referred to in the industry as the "standard-standard" payment amount), or (2) the monthly payment amount required to repay the loan balance at the time the borrower enters IBR over 10 years (referred to in the industry as the "permanent-standard" payment amount). When a borrower applies for IBR, the servicer is required to use the higher of those two amounts in order to maximize the borrower's chances of qualifying. The "permanent-standard" payment amount is captured in Item 14e. We assume that Item 14c is attempting to capture the "standard-standard" payment amount, since the federal loan servicer will need to weigh borrower payments made outside of the IBR umbrella against that amount to determine if those payments will count toward loan forgiveness. However, that is not what the instructions are requesting. The instructions ask for the monthly payment amount used in determining PFH. In many instances, that will be the "permanent-standard" amount, resulting in that amount being reported in both 14c and 14e. Following the instructions will lead to the Department's servicers not having a piece of critical information in many instances. We suggest modifying the instruction for Item 14c as follows:

"14c: Enter the standard repayment plan monthly amount computed when the borrower initially entered repayment on the loan."

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ED Response: We agree with the comment and have made the recommended change, but have replaced "computed" with "calculated."

3. The instructions for Item 14 request the servicer to "[c]omplete Items 14a through 14h only if: (i) the loan(s) you hold is any loan type other than a Federal PLUS Loan for Parents (loan type T) or an Unsubsidized Federal Consolidation Loan (loan type J) that repaid a parent PLUS loan; and (ii) the borrower has repaid or is currently repaying that loan under the Income-Based Repayment (IBR) Plan." Again, following these instructions will deprive the Department's loan servicers of information needed to correctly service these loans in the future. If the borrower is not currently and has not ever been in IBR, there are still three critical pieces of information that the servicer needs to pass along in order for the Department's servicers to correctly determine eligibility and count qualifying payments for IBR should the borrower apply and qualify in the future: Item 14c ("standard-standard repayment amount, as corrected above), Item 14f (the number of qualifying IBR payments), and Item 14g (begin date of qualifying IBR payments). We suggest that the instructions for Item 14 be modified to read as follows:

"Item 14: Complete Items 14a through 14h if: (i) the loan(s) you hold is any loan type other than a Federal PLUS Loan for Parents (loan type T) or an Unsubsidized Federal Consolidation Loan (loan type J) that repaid a parent PLUS loan; and (ii) the borrower has repaid or is currently repaying that loan under the Income-Based Repayment (IBR) Plan. Complete only Items 14c, 14f, and 14g if: (i) the loan(s) you hold is any loan type other than a Federal PLUS Loan for Parents (loan type T) or an Unsubsidized Federal Consolidation Loan (loan type J) that repaid a parent PLUS loan; and (ii) the borrower has never repaid that loan under the IBR Plan."

Or

"Item 14: Complete Items 14a through 14h only if: (i) the loan(s) you hold is any loan type other than a Federal PLUS Loan for Parents (loan type T) or an Unsubsidized Federal Consolidation Loan (loan type J) that repaid a parent PLUS loan; and (ii) the borrower has repaid or is currently repaying that loan under the Income-Based Repayment (IBR) Plan. Even if the borrower has never repaid any loan(s) under the IBR Plan, complete Items 14c, 14f, and 14g if the loan(s) you hold is any loan type other than a Federal PLUS Loan for Parents (loan type T) or an Unsubsidized Federal Consolidation Loan (loan type J) that repaid a parent PLUS loan."

ED Response: We agree that certain IBR information is needed even for loans that have not been repaid under the IBR Plan. The instructions for Item 14 have been revised to read as follows:

"Item 14: Complete only if the loan(s) you hold is any loan type other than a Federal PLUS Loan for Parents (loan type T) or an Unsubsidized Federal Consolidation Loan (loan type J) that repaid a parent PLUS loan.

"If the borrower has repaid or is currently repaying that loan under the Income-Based Repayment (IBR) Plan, complete Items 14a through 14h.

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"If the borrower has never repaid that loan under the IBR Plan, complete only Items 14c, 14f, and 14g."

We believe this revised text incorporates the recommended change, but presents the information more clearly and concisely.

4. IBR detail information (Items 14a - h) should be moved to the end of the LVC request. There are fewer borrowers in IBR than on a level, graduated, or extended repayment schedule. For most of the certified LVCs, there would be a blank section right in the middle of the request.

ED Response: We believe that a more logical location for the IBR Information would be immediately following the Repayment Plan Information, instead of before the Repayment Plan Information. Accordingly, the order of the IBR Information and Repayment Plan Information sections has been reversed.

5. Item 15c requests the number of months remaining under the current repayment plan. If the borrower is in IBR, it is unclear what the servicer is to report, and the information regarding the current repayment plan is irrelevant. We believe that the form should be requesting for IBR borrowers the number of months remaining under the "standard-standard" repayment plan (which information is needed should the borrower ever leave IBR and go into "expedited standard" repayment). However, that is not what the form is requesting. We would suggest the following modification for the instructions for Item 15c:

"15c: If the borrower is not currently repaying under the IBR plan, enter the remaining number of months in the repayment period under the current repayment plan. If the borrower is repaying under the IBR plan, enter the number of repayment months that the borrower would have remaining under the standard repayment plan should they choose to leave IBR completely."

ED Response: We agree, and have revised the instructions as recommended, with minor wording changes:

"15c: Unless the borrower is currently repaying under the IBR Plan, enter the remaining number of months in the repayment period under the current repayment plan. If the borrower is repaying under the IBR Plan, enter the remaining number of months that the borrower would have in the repayment period under the Standard Repayment Plan if the borrower were to leave the IBR Plan."

6. We also need to know how/if prepayments are to be reported on the LVC in Items 14f and 15c. For example, if a borrower is on IBR and has made five normally scheduled payments, and also prepaid five months into the future, how are these payments to be reported? It is unclear from the form whether we should report, in Item 14f, the number of qualifying IBR payments as five or ten, and if the number of repayment months remaining in Item 15c should include or exclude the five prepaid months. We also need to know if the borrower will be starting his or her repayment of the special consolidation loan immediately or five months into the future.

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ED Response: In accordance with 34 CFR 682.215(f)(2), a borrower qualifies for IBR loan forgiveness after making qualifying monthly payments for a 25-year period, or making the equivalent of 25 years of payments through a combination of qualifying monthly payments and economic hardship deferments. Prepayments do not count as additional qualifying monthly IBR payments (or shorten the 25-year repayment period), nor would they count against the remaining repayment period under the Standard Repayment Plan if a borrower chooses to leave the IBR Plan completely.

Repayment of a Special Consolidation Loan will begin immediately upon consolidation.

7. Borrower identifying information should be added to the second page of the LVC request. If the pages were to get separated, there is no identifying information as to whom the page is associated with.

ED Response: We have added both borrower and loan holder/servicer identifying information at the top of the second page.

8. There is no information indicating the eligibility of spousal consolidation loans. Are these eligible or not? It would seem that the only way to bring over a spousal consolidation from FFELP to DL would be to issue an additional and separate Special Direct Consolidation Loan Promissory Note for just the spousal consolidation. Given the Department's previous policy on non-consolidation of spousal consolidation loans, spousal consolidation loans should not be eligible for this Special Direct Consolidation Loan program. In addition, it should be noted that the statutory authority to create a spousal consolidation no longer exists, and the Department does not have the legal authority to undo a spousal consolidation, and separate it into its component borrower parts (making the borrowers no longer jointly and severally liable for the full amount of the consolidation loan). We suggest that the LVC clarify that spousal consolidation loans are not eligible for the Special Direct Consolidation Loan program in order to alleviate any unintentional misinterpretations of the eligible loan types of "J" and "O".

ED Response: Joint FFEL consolidation loans are not eligible for consolidation into a Special Direct Consolidation Loan (or a traditional Direct Consolidation Loan). We have added a note (following the instructions for entering the loan type) clarifying that joint FFEL Consolidation Loans may not be consolidated.

9. We would hope that the Department will provide the borrower with the current standard 15 day review period to review the proposed Special Direct Consolidation Loan application and make changes to it (cancel it or add and remove loans). This is an important consumer safeguard that was required for all FFELP loans (10 days), and which the Department currently follows in the regular DL Consolidation program.

ED Response: A borrower will submit an application for a Special Direct Consolidation Loan through an electronic process similar to the electronic application process for traditional Direct Consolidation Loans. As part of the electronic application process, an applicant for a Special Consolidation Loans will be required to actively confirm that he or she wants to consolidate each of the loans listed in the application before the application can be submitted. Upon submitting

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an application for a Special Direct Consolidation Loan, an applicant will receive instructions on how he or she may cancel an application prior to the Department's payoff of the loans the borrower selected for consolidation. Once a Special Direct Consolidation Loan has been made, a borrower will have the same option as a traditional Direct Consolidation Loan borrower to add additional eligible loans within a 180-day period.

10. Finally we note that the draft LVC is being issued with very little notice and will be used for a program of very short duration (less than 6 months). In addition, it requires a substantial (almost double the number of fields) amount of additional information compared to the LVC for the regular DL consolidation program. Many servicers will not have the time or the resources to create a program to provide the information required by the new LVC. That means that these forms will likely be filled out manually. Given that we do not know the timing or the volume of the requests for special consolidation, we cannot say with certainty that we will be able to respond to every LVC within 10 business days of the date received. That will depend on factors beyond our control, including the number of borrowers who apply for the program and the timing of those applications. Servicers will do their utmost to turn these requests around timely, but the Department cannot expect the 10-day turnaround provided in regulation for regular consolidation loans (an entirely different regulatory creature, as the Department itself has pointed out) given the unique nature and short life span of the program.

ED Response: Because all of the information requested on the LVC for Special Direct Consolidation Loans should be readily available from holder/servicer's loan servicing records, we believe that the regulatory 10-day period provides sufficient time for a holder/servicer to complete and return the LVC.

11. We can say with certainty that the 15 minutes estimated to review and complete the form is entirely inadequate. Given that the process is likely to be manual as noted above, it will take substantially longer than 15 minutes to review the borrower's loan records and populate up to 26 different fields for each separate loan. We estimate the burden will be more in the nature of 30 minutes (on average) to complete a single form. The Department has estimated that up to 6 million borrowers are eligible for this program, which would mean a burden of 3 million hours.

ED Response: Given that the LVC for Special Direct Consolidation Loans requires more information to be provided than the LVC for traditional Direct Consolidation Loans, we agree that it would be reasonable to increase the estimated completion time from 15 minutes to 30 minutes.