

1 FINAL 4/9/2009

2 PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT

3

4 PROPOSED PART K to TITLE IV of the HEA

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6 SEC. 499A. **FEDERAL STUDENT LOAN PROGRAM FOR ACADEMIC YEAR 2010 -**

7 **2011 AND BEYOND.**—Beginning on July 1, 2010, and thereafter, all Unsubsidized Stafford,

8 Subsidized Stafford, PLUS or Consolidation Loans previously made to borrowers under Part B,

9 Sections 427, 428B or 428C, (FFEL Program Loans), shall be made under this Part.

10 SEC. 499B. **STATEMENT OF PURPOSES; TERMS AND CONDITIONS.**

11 (a) **PURPOSE.**—The purpose of this Part is to enable the Secretary --

12 (1) to provide a federally supported loan program for students attending eligible

13 institutions, beginning on July 1, 2010, that combines the advantages of programs previously

14 offered under Part B and Part D of this Title.

15 (2) specifically, to combine the advantages of the Federal Government's low cost of funds

16 with the private sector's origination, servicing, and default aversion capabilities, and to provide

1 eligible institutions with a choice of loan origination and loan servicing providers, thereby
2 allowing eligible institutions to take advantage of competition to obtain value-added services,
3 superior customer service, and innovations in loan delivery technology to improve the delivery
4 of loan funds to eligible students and reduce loan defaults.

5 (b) **TERMS AND CONDITIONS OF LOANS**

6 (1) Unless otherwise specified in this Part, loans made to borrowers under this Part shall
7 have the same terms, conditions, and benefits, and be available in the same amounts, as loans
8 made to borrowers under Section 455 of Part D.

9 (2) Institutions of higher education that meet the eligibility requirements to participate in
10 the Federal Family Education Loan Program under Part B, or the Direct Student Loan Program
11 under Part D, are eligible to participate in the new loan program established under this Part.

12 (3) **SPECIAL ALLOWANCES NOT PAID.**—No special allowance shall be paid to
13 eligible lenders for loans made under this Part.

14 (4) **NO LOAN FEES FROM LENDERS.**—The Secretary shall not collect any loan fee
15 assessed on eligible lenders under Part B from eligible lenders for loans made under this Part.

1 SEC. 499C. **LOAN ORIGINATION.**

2 (a) **IN GENERAL: SCHOOL CHOICE OF LOAN ORIGINATION PLATFORMS.—**

3 Beginning on July 1, 2010, and thereafter, an eligible institution, as defined in Section 435 of
4 Part B, may elect to have loans made to such institution’s eligible students under this Part
5 originated by one or more eligible lenders as defined in Section 435 of Part B.

6 (b) **ORIGINATION BY ELIGIBLE LENDERS: REQUIREMENTS FOR**

7 **DISBURSEMENT OF LOANS.—**An eligible lender that originates loans made under this
8 Section shall disburse such loans in accordance with Section 428G of Part B.

9 (c) **SELECTION OF ELIGIBLE LENDERS BY PARTICIPATING INSTITUTIONS.—**

10 Any institution of higher education participating in the student loan program under this Part may
11 select, subject to the terms and conditions in subsection (d), one or more eligible lenders to
12 originate loans made to such institution’s students, or families of its students. In selecting
13 eligible lenders to originate loans under this Part, institutions of higher education shall choose
14 eligible lenders on the basis of such lenders’ loan delivery technology, customer service, and
15 programs to minimize defaults.

1 (d) **TERMS AND CONDITIONS OF ELIGIBLE LENDER SELECTION BY**

2 **INSTITUTIONS.—**

3 (1) An institution of higher education that selects one or more eligible lenders to originate
4 loans to such institution’s students, or families of its students, may not solicit or accept any gift
5 from such eligible lenders or their affiliated entities, and lenders are prohibited from offering
6 improper inducements to educational institutions or employees of such educational institutions in
7 order to be selected to originate loans made under this Part. For purposes of this subsection,
8 “gift” and “improper inducement” shall have the meanings set forth in Section 435 of Part B.

9 (2) The Secretary may limit, suspend, or terminate from participation in the loan program
10 under this Part any eligible lender who the Secretary determines, after notice and hearing, has
11 offered or provided improper inducements to institutions of higher education participating in the
12 program, or to employees of such institutions, in order to be selected by such institutions to
13 originate loans under this Part.

14 **SEC. 499D. FINANCING AND SALE OF LOANS ORIGINATED BY ELIGIBLE**

15 **LENDERS.**

16 (a) **LOAN PARTICIPATION AGREEMENT.—**

1 (1) **TERMS OF PARTICIPATION AGREEMENT.**—The Secretary and each eligible
2 lender that originates loans under this Part shall enter into a Loan Participation Agreement,
3 pursuant to which the Secretary shall purchase a one hundred percent participation interest in
4 each disbursement of each eligible loan made by such lender. The lender shall sell the
5 participation interest to the Department no later than 15 days of first disbursement. The
6 Secretary shall fund such participation within one business day of the request by such lender.
7 During the term of the Loan Participation Agreement, the Department shall have beneficial
8 ownership of the loans that are subject to the Loan Participation Agreement, and the eligible
9 lender shall service the loans or contract with a third-party servicer to service the loans in
10 accordance with regulations issued by the Secretary. The Loan Participation Agreement shall
11 provide that the eligible lender who is a party to the Loan Participation Agreement must
12 transfer to the Secretary, no later than the Mandatory Loan Purchase Date, legal title to all loans
13 placed in the Participation facility. The Mandatory Loan Purchase Date shall be no later than
14 120 days after such loans are fully disbursed.

15 (2) **PAYMENTS TO ELIGIBLE LENDERS.**—

1 **A. PURCHASE PRICE FOR PARTICIPATION INTEREST-**The Secretary shall pay
2 lenders a Purchase Price equal to the principal balance of the eligible loans in return for the one
3 hundred percent Participation interest in such loans.

4 **B. PARTICIPATION SPREAD FEE-**

5 (i) In addition to the Purchase Price, the Secretary shall pay lenders an interim
6 Participation Spread Fee on eligible loans subject to the Participation Agreement equal to
7 an annual rate of [0.60] percentage points times the principal balance of the fully
8 disbursed eligible loans for the number of days of the holding period as defined in (ii).

9 The Participation Spread Fee of [0.60] percent shall be in effect for loans first disbursed
10 on or before September 30, 2012. For loans first disbursed after September 30, 2012, the
11 Participation Spread Fee shall be established on an annual basis through a competitive
12 bidding process under subsection (c).

13 (ii) The holding period is from the day of first disbursement through the date of
14 transfer of legal title to the loan as described in subsection (b).

15 **(b) TERMS OF LOAN PURCHASES BY SECRETARY.—**

1 (1) **PURCHASE AGREEMENT.**—The Loan Purchase Agreement between the Secretary
2 and eligible lenders who originate and sell loans to the Secretary under this Part shall contain
3 terms and conditions consistent with the Master Loan Purchase Agreements issued by the
4 Secretary under Section 459A of Part D.

5 (2) **PUT FEE.**—On or before the Mandatory Loan Purchase Date, the lender shall
6 transfer legal title to the loans to the Secretary for no additional consideration except for the
7 payment of a Put Fee equal to [\$75.00] for such Loan. The [\$75] per loan Put Fee shall
8 remain in effect for loans first disbursed on or before September 30, 2012. For loans first
9 disbursed after September 30, 2012, the Put Fee shall be established on an annual basis
10 through a competitive bidding process established in subsection (c).

11 (c) **PARTICIPATION SPREAD FEE AND PURCHASE FEE FOR SUBSEQUENT**
12 **PERIODS.**—For loans first disbursed after September 30, 2012, the Participation Spread Fee
13 and the Put Fee paid under this section shall be established by the Secretary on an annual basis
14 based on a single competitive process administered by the Secretary that sets both fees
15 simultaneously and is designed to maximize the benefits of competition for origination and
16 participation from a broad set of eligible lenders.

1 SEC. 499E. **LOAN SERVICING.**

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3 (a) **CONTRACTS FOR SUPPLIES AND SERVICES.—**

4 (1) **IN GENERAL.**—The Secretary shall award multiple contracts for the servicing of
5 loans made under this Part, including loans originated through the Department of Education’s
6 Common Originations and Disbursement System, or its successor under Part D, and through
7 eligible lenders that use private origination systems, through a competitive bidding process that
8 takes into account price, servicing capacity, and servicing capability, including default aversion
9 capability.

10 (2) **CONTRACTORS.**—The entities with which the Secretary may enter into contracts for
11 loan servicing and default aversion services shall include only entities that the Secretary
12 determines are qualified to provide such services and will comply with the procedures applicable
13 to the award of such contracts. In the case of awarding contracts for the servicing of loans under
14 this part, including default aversion services, the Secretary shall enter into contracts only with
15 entities that have relevant experience and demonstrated effectiveness in loan servicing and
16 default aversion and that meet financial responsibility requirements contained in regulations
17 prescribed by the Secretary.

1 **(3) SERVICING BY LOAN ORIGINATORS.—**

2 **(A) Loans originated by Servicer or Servicer Affiliate.**—Loans originated under
3 this Part by eligible lenders, or affiliates of such eligible lenders, who have been awarded
4 contracts for servicing under this Section shall be serviced by such eligible lender or affiliate of
5 such eligible lender.

6 **(B) Servicing of Loans Originated by Other Eligible Lenders.**—Loans originated
7 under this Part by eligible lenders, or affiliates of such eligible lenders, who have not been
8 awarded contracts for servicing under this Section shall be serviced by either --

9 (i) such eligible lender, or its affiliate, as long as such lender, or its affiliate, abides
10 by the terms and conditions, including price, established by the Secretary under the
11 contracts for loan servicing awarded under this section,

12 (ii) in the case of all other eligible lenders, a servicer chosen by the institution of
13 higher education from among the servicers that have been awarded such a contract by the
14 Department under this section.

15 **(C) Servicing on Loans Originated through Department's Common**
16 **Originations and Disbursement System.**—Institutions of higher education that choose to have

1 loans made under Part D originated through the Department's Common Originations and
2 Disbursement System or its successor shall choose one or more eligible servicers to provide
3 servicing on loans made to their students and parents of such students. Eligible servicers shall be
4 servicers who have been awarded contracts to service loans made under this Part and Part D.

5 **(b) TERMS OF LOAN SERVICING CONTRACTS-RISK SHARING FOR SERVICERS**

6 (1) **Risk Sharing-** As part of its servicing obligations, an eligible servicer shall perform
7 activities designed to minimize defaults and to achieve substantial reductions in default rates.

8 These activities may include targeted borrower outreach, delivery of borrower financial literacy
9 and counseling tools, and related programs that are delivered in coordination with higher
10 education institutions. If a borrower defaults on a loan made under this Part at any time in the
11 first four (4) years after such loan goes into repayment, the eligible servicer servicing such
12 borrower's loan shall reimburse the Department an amount equal to three percent of the total
13 unpaid principal and accrued interest on the loan at the time the loan enters default, provided
14 such servicer has serviced the loan for at least two consecutive years immediately preceding the
15 default. The Department may offset required risk-sharing payments due from eligible servicers
16 from any payments made to such eligible servicers under their servicing contracts.

1 (2) **Rates for Loan Servicing.**—Servicers submitting bids pursuant to paragraph (a)(1) of
2 this section must take the risk-sharing requirement in subsection into account in formulating
3 their rate proposals to the Department. Servicers may include in their competitive proposals
4 servicing rates that differ based on the type of loan made to an eligible borrower under this Part,
5 and the type of the institution the borrower attends, including but not limited to whether the
6 institution is a two-year institution or a four-year institution or a non-profit institution or for-
7 profit institution

8 (3) **Servicing and Default Aversion standards.**—The Secretary shall, by regulation
9 developed in consultation with eligible servicers awarded contracts under this section, prescribe
10 forms and procedures, electronic data linkages and means of document retention designed to
11 standardize computer forms and servicing processes, minimize administrative costs and
12 streamline or simplify rules, to benefit borrowers and reduce program administration costs.

13 **SEC. 499F. POST-DEFAULT COLLECTION SERVICES ON LOANS.**—

14 (a) **IN GENERAL.**—The Secretary shall contract with one or more private collection agencies
15 for collection services for loans made under this Part that default.

1 (b) **ALLOCATION OF DEFAULTED LOANS.**—In assigning loans to private collection
2 agencies for collection services, the Secretary shall determine the volume of loans assigned to
3 the private collection agency based on the performance of such collection agency in comparison
4 to other collection agencies performing default collection services for the Department.

5 (c) **AUTHORITY TO SELL DEFAULTED LOANS.**—The Secretary is authorized to sell
6 defaulted loans under this Part to collection agencies, eligible lenders, or other qualified
7 purchasers on such terms as the Secretary determines are in the best interest of the United States.

8 **SEC. 499G. DEFAULT AVERSION AND FINANCIAL LITERACY.**—

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10 [New program that redirects guaranty model cash flow origination and account
11 maintenance to financial literacy and default aversion programs.]

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