

Improper Loan Servicing and Collection Appeal

This section is divided into two parts. The first part (pages 185 through 212) provides background information on the improper loan servicing and collection appeal and outlines the process and procedures for submitting an improper loan servicing and collection appeal. The second part (pages 213 through 220) provides an example of a situation that would warrant the submission of an improper loan servicing and collection appeal and sample material as it would pertain to an improper loan servicing and collection appeal.

To understand the improper loan servicing and collection appeal process, the U.S. Department of Education (Department) recommends that the reader review both parts of this section.

PART I: Background, Process, and Procedures

QUALIFYING

What is an improper loan servicing and collection appeal?

An improper loan servicing and collection appeal is an appeal submitted to the Department alleging that a school's official cohort default rate includes defaulted Federal Family Education Loan (FFEL) Program and/or William D. Ford Federal Direct Loan (Direct Loan) Program loans that are improperly serviced based on the criteria specified in 34 CFR Section 668.17(h).

When is a defaulted loan considered improperly serviced for cohort default rate purposes?

A defaulted **FFEL Program loan** is considered to have defaulted due to improper servicing¹ if:

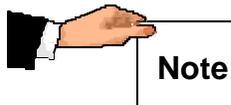
- the **borrower never made a payment;**

AND

- the school can document that the lender **failed to perform one or more** of the following activities:
 - ❖ send at least one **letter** (other than the final demand letter) urging the borrower or endorser to make payments on the loan (if the lender was required to send such letters);
 - ❖ attempt at least one **telephone call** to the borrower or endorser (if such attempts were required);
 - ❖ submit a request for **pre-claims assistance to the guaranty agency** (if such a request was required);
 - ❖ send a **final demand letter** to the borrower (if required);

AND/OR

 - ❖ submit a certification (or other evidence) that **skip tracing** was performed (if required).



Servicing and collection activities performed by the lender after the final demand letter has been sent will not be considered when determining if a loan has been properly serviced for cohort default rate purposes.

¹ 34 CFR Section 668.17(h)(3)(viii)(A)

A defaulted **Direct Loan Program loan** is considered to have defaulted due to improper servicing² if:

- the **borrower never made a payment;**
- AND
- the school can document that the Direct Loan servicer **failed to perform one or more** of the following activities:
 - ❖ send at least one **letter** (other than the final demand letter) urging the borrower or endorser to make payments on the loan (if the Direct Loan servicer was required to send such letters);
 - ❖ attempt at least one **telephone call** to the borrower or endorser, if such attempts were required, unless the borrower or endorser is incarcerated or is residing outside a State, Mexico, or Canada;
 - ❖ send a **final demand letter** to the borrower (if required);
- AND/OR
- ❖ document that **skip tracing** was performed if the Direct Loan servicer determined it did not have the borrower's current address.



Note

Servicing and collection activities performed by the Direct Loan servicer after the final demand letter has been sent will not be considered when determining if a loan has been properly serviced for cohort default rate purposes.

Q. Does the Direct Loan servicer have to request pre-claims assistance in order for a Direct Loan Program loan to be considered properly serviced?

A. No, there is no pre-claims assistance activity in the Direct Loan Program.

² 34 CFR Section 668.17(h)(3)(viii)(B)

What is involved in skip tracing?

Skip tracing is required when the lender/servicer receives information indicating that the borrower's address of record is incorrect.

The lender/servicer must either:

- certify that skip tracing was performed;
- OR
- perform at least one of the following—
 - ❖ attempt to contact any endorser;
 - ❖ attempt to contact the borrower's relatives;
 - ❖ attempt to contact the borrower's references;
 - ❖ attempt to contact the borrower, endorser, or references using telephone directory assistance;
 - ❖ attempt to contact any individual and/or any entities identified in the borrower's loan file;
- OR
- ❖ perform any other normal skip tracing activity.

For cohort default rate purposes, skip tracing is NOT required if:

- the lender/servicer receives information regarding an incorrect address on or after 151 days (or 241 days if the borrower entered into delinquency on or after October 7, 1998) of the borrower becoming delinquent;
- OR
- the lender/servicer has the borrower's address but does not have a record of the borrower's correct telephone number.

Is a loan considered improperly serviced for cohort default rate purposes if the servicing conducted on the loan does not meet the requirements outlined in 34 CFR Section 682.411?

No. The requirements outlined in 34 CFR Section 682.411 define the steps a lender must take in order for the lender and guaranty agency to qualify for federal payments on a loan. The requirements outlined in 34 CFR Section 668.17(h) form the only basis on which a school may submit a cohort default rate appeal based on improper loan servicing and collection.

When is a defaulted loan considered properly serviced for cohort default rate purposes?

A defaulted **FFEL Program loan** is considered to have been properly serviced if:

- the **borrower made a payment**;
- OR
- the loan servicing records indicate that the lender **performed each** of the following activities, if required:
 - ❖ sent at least one **letter** (other than the final demand letter) urging the borrower or endorser to make payments on the loan (if the lender was required to send such letters);
 - ❖ attempted at least one **telephone call** to the borrower or endorser (if such attempts were required);
 - ❖ submitted a request for **pre-claims assistance to the guaranty agency** (if such a request was required);
 - ❖ sent a **final demand letter** to the borrower (if required);
- AND/OR

- ❖ submitted a certification (or other evidence) that **skip tracing** was performed (if required).

A defaulted **Direct Loan Program loan** is considered to have been properly serviced if:

- the **borrower made a payment;**
 - OR
 - the loan servicing records indicate that the Direct Loan servicer **performed** each of the following activities, if required:
 - ❖ sent at least one **letter** (other than the final demand letter) urging the borrower or endorser to make payments on the loan (if the Direct Loan servicer was required to send such letters);
 - ❖ attempted at least one **telephone call** to the borrower or endorser, if such attempts were required, unless the borrower or endorser is incarcerated or is residing outside a State, Mexico, or Canada
 - ❖ sent a **final demand letter** to the borrower (if required);
- AND/OR
- ❖ submitted a certification (or other evidence) that **skip tracing** was performed if the Direct Loan servicer determined that it did not have the borrower's current address (if required).

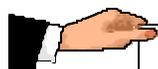
What are some examples of properly and improperly serviced loans for cohort default rate purposes?

The following chart provides a summary of the relevant collection activities associated with 15 loans. Each loan has been identified as being properly or improperly serviced based on the collection activities identified on the chart.

Examples of Properly and Improperly Serviced Loans								
Type of loan	Date demand letter (other than final demand letter) sent	Date telephone call attempted	Date pre-claims assistance requested, if required	Date final demand letter sent	Address Known	Date of skip-tracing	Date payment made by borrower	Serviced
SF	11/11/1998	01/14/1999	04/15/1999	05/15/1999	Yes	Not required	None	Proper
D1	02/08/1999	03/15/1999	Not required	08/08/1999	Yes	Not required	None	Proper
SU	None	None	None	None	No	08/09/1999	None	Proper
D1	None	None	Not required	None	No	04/14/1999	None	Proper
SL	None	None	None	None	Yes	Not required	06/12/1999	Proper
D2	None	None	Not required	None	Yes	Not required	09/18/1999	Proper
SL	02/08/1999	None	04/12/1999	06/18/1999	Yes	Not required	None	Improper
D1	05/30/1999	None	Not required	12/22/1999	Yes	Not required	None	Improper
SU	None	06/16/1999	09/16/1999	11/11/1999	Yes	Not required	None	Improper
D2	None	01/01/1999	Not required	08/09/1999	Yes	Not required	None	Improper
SF	02/16/1999	07/09/1999	None	09/11/1999	Yes	Not required	None	Improper
SL	06/09/1999	02/22/1999	08/21/1999	None	Yes	Not required	None	Improper
D2	02/22/1999	05/13/1999	Not required	None	Yes	Not required	None	Improper
SF	01/15/1999	02/27/1999	05/15/1999	None	No	None	None	Improper
D1	03/14/1999	05/12/1999	Not required	None	No	None	None	Improper

Which schools are eligible to submit an improper loan servicing and collection appeal?

If a school's most recent official cohort default rate [in this case fiscal year (FY) 1998] is equal to or greater than 20.0 percent, the school may file an appeal alleging improper loan servicing and collection if it believes that one or more defaulted FFEL Program and/or Direct Loan Program loans included in its official cohort default rate calculation did not receive loan servicing activities specified in 34 CFR Section 668.17(h).³



Note

A school does NOT have to be subject to sanctions to submit an appeal on the basis of improper loan servicing and collection, but the school's official cohort default rate must be 20.0 percent or greater.

³ HEA Section 435(a)(3) and 34 CFR Section 668.17(h)

Why should a school submit an improper loan servicing and collection appeal?

If eligible, a school should submit an improper loan servicing and collection appeal if it believes that there are improperly serviced loans, as defined in 34 CFR Section 668.17(h), in its official cohort default rate, and it has not previously appealed the official cohort default rate based on allegations of improper loan servicing and collection.

The following checklist summarizes the criteria for an improper loan servicing and collection appeal. A school should review the checklist to determine if it can appeal on the basis of improper loan servicing and collection.



Improper Loan Servicing and Collection Appeal Eligibility Checklist

To be eligible to appeal its official cohort default rate on the basis of improper loan servicing and collection, a school must meet ALL of the following criteria:

- the school's most recent official cohort default rate is 20.0 percent or greater;

AND

- after reviewing the loan servicing records for defaulted loans included in the school's official cohort default rate, the school believes that some of the loans were improperly serviced as described in 34 CFR Section 668.17(h)(3)(viii);

AND

- the school has NOT previously appealed the official cohort default rate at issue on the basis of improper loan servicing and collection.

For which cohort default rates may a school submit an improper loan servicing and collection appeal?

The sanction(s) to which a school is subject determines which cohort default rates a school may appeal on the basis of improper loan servicing and collection.

- If the school is NOT subject to sanctions, but its most recent official cohort default rate is 20.0 percent or greater, it may ONLY appeal its most recent official cohort default rate (in this case FY 1998) based on allegations of improper loan servicing and collection.
- If the school is subject to **initial loss** of FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program eligibility, it may appeal on the basis of improper loan servicing and collection any or all of the three most recent official cohort default rates on which the loss is based — as long as the school has not previously challenged that fiscal year’s official cohort default rate on the basis of improper loan servicing and collection. This year, the school may appeal its FY 1996, FY 1997, and/or FY 1998 official cohort default rates.
- If the school is subject to **extended loss** of FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program eligibility, it may appeal on the basis of improper loan servicing and collection ONLY the most recent (in this case FY 1998) official cohort default rate.
- If the school is subject to possible action to **limit, suspend, and/or terminate (LS&T)** its eligibility to participate in all Title IV Student Financial Assistance Programs due to its most recent official cohort default rate, but it is NOT subject to initial loss of FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program participation, it may appeal on the basis of improper loan servicing and collection ONLY the most recent (in this case FY 1998) official cohort default rate.

Please refer to the “Cohort Default Rate Effects” section beginning on page 35 for more information on sanctions.

Q. If a school is subject to both initial loss of FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program eligibility AND LS&T, which official cohort default rates may the school appeal on the basis of improper loan servicing and collection?

A. The school may appeal its three most recent official cohort default rates, as long as it has not previously appealed that year’s official cohort default rate on the basis of improper loan servicing and collection.

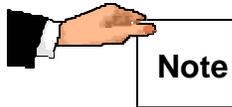
The following table summarizes the official cohort default rates that a school may appeal on the basis of improper loan servicing and collection.

Official Cohort Default Rates That May Be Appealed on the Basis of Improper Loan Servicing and Collection	
If a school is subject to ...	The school may...
no sanctions and has an FY 1998 official cohort default rate that is 19.9 percent or lower	NOT appeal
no sanctions but has an FY 1998 official cohort default rate of 20.0 percent or greater	appeal FY 1998
initial loss of FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program eligibility	appeal FY 1998, FY 1997*, and/or FY 1996*
extended loss of FFEL Program, Direct Loan, and/or Federal Pell Grant Program eligibility	appeal FY 1998
LS&T only (based on FY 1998 cohort default rate)	appeal FY 1998
LS&T AND initial loss of FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program	appeal FY 1998, FY 1997*, and/or FY 1996*

* Provided that the school has not previously appealed the cohort default rate on the basis of improper loan servicing and collection.

What role does a guaranty agency have in a school's improper loan servicing and collection appeal?

Guaranty agencies are responsible for responding to schools' requests for loan servicing records for **FFEL Program loans** that they guaranteed and currently hold.



A school can determine which guaranty agency currently maintains the guaranty on FFEL Program loans by the **guarantor/servicer code** that is reported on the loan record detail report for each loan. "Appendix A" identifies the entity associated with each guarantor/servicer code.

- If a guaranty agency guaranteed and currently holds defaulted loans associated with 99 or fewer borrowers in a school's cohort default rate, the agency is required to provide all of the loan servicing records associated with each borrower's loan included in the cohort default rate calculation.
- If a guaranty agency guaranteed and currently holds defaulted loans associated with 100 or more borrowers in a school's cohort default rate, the agency should identify a representative sample of the borrowers and only provide the loan servicing records for those borrowers included in the representative sample.⁴

Please refer to page 381 in the section entitled "Information for Guaranty Agencies on Adjustments and Appeals" for more information on how a guaranty agency identifies a representative sample.

⁴ 34 CFR Section 668.17(h)(3)(ii)(B)(2)

- A guaranty agency may charge a reasonable fee, not to exceed \$10.00 per borrower file, for the loan servicing records provided to the school.⁵
- The guaranty agency must respond to a school's request for loan servicing records in a specified period of time. If the guaranty agency does not respond within the required period of time, as outlined on page 382, the school should advise the Department's Default Management Division, in writing, of the delay.

Please refer to the "Information for Guaranty Agencies on Adjustments and Appeals" section beginning on page 377 for more information on guaranty agency responsibilities.

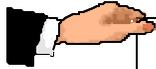
What role does the Department have in a school's improper loan servicing and collection appeal?

The Department has two separate roles in a school's improper loan servicing and collection appeal. The Department's first role is responding to a school's request for loan servicing records if the guarantor/servicer code is "555" or "0101". The Department's second role is to review a school's improper loan servicing and collection appeal.

- The Department is responsible for responding to a school's request for loan servicing records for FFEL Program loans currently held by the Department and/or Direct Loan Program loans.
 - ❖ The **Department's Default Management Division** is responsible for responding to schools' inquiries regarding **FFEL Program loans that are currently held by the Department**. These loans are identified on the loan record detail report with a guarantor/servicer code of "**555**". The address to submit loan servicing record requests to the Department's Default Management Division is provided in "Appendix A."

⁵ 34 CFR Section 668.17(h)(3)(ii)(B)(4)

- ❖ The **Department's Direct Loan servicer** is responsible for responding to schools' inquiries regarding **Direct Loan Program loans**. These loans are identified on the loan record detail report with a guarantor/servicer code of "**0101**." The address to submit loan servicing record requests to the Department's Direct Loan servicer is provided in "Appendix A."

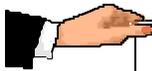
**Note**

Even though the **current lender/servicer** code for defaulted Direct Loan Program loans is "555," ALL inquiries regarding Direct Loan Program loans must be directed to the Direct Loan servicer.

- The Department is also responsible for reviewing a school's improper loan servicing and collection appeal once the school has received responses to all of its requests for loan servicing records. The Department will review each allegation of improper loan servicing and collection listed on the spreadsheet submitted by a school as a part of its timely submitted appeal.
 - ❖ If the Department determines that loans have been serviced improperly, the Department will remove the improperly serviced loans from the school's cohort default rate and will notify the school of its revised cohort default rate(s).

Please refer to page 33 of the "Cohort Default Rate Calculation" section for information on subtracting loans from the cohort default rate calculation.
 - ❖ If the school was previously notified that it was subject to sanctions due to its cohort default rates and the Department determines that the school's revised cohort default rate is below the applicable sanction threshold(s), the Department will withdraw the notice that the school is subject to the loss of eligibility to participate in any Title IV Student Financial Assistance Programs due to the school's official cohort default rates.

- ❖ If the school is subject to initial or extended loss of eligibility to participate in the FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program, and the Department determines that the school's revised cohort default rate(s) is not below 25.0 percent and the school does not have any other cohort default rate adjustments/appeals pending before the Department, the Department will notify the school of the effective date of its loss of eligibility to participate in the FFEL Program, Direct Loan Program, and/or Federal Pell Grant Program and any liabilities that the school may have incurred during the adjustment/appeal process.

**Note**

If a school is subject to initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program and the school's adjustment/appeal of that loss is unsuccessful, the school will be liable for certain costs associated with FFEL Program loans certified and delivered and Direct Loan Program loans originated and disbursed by the school. A school's period of liability with regard to these costs begins 30 calendar days after the school receives notice that it is subject to initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program. The period of liability ends upon the earlier of the withdrawal of the school's adjustment/appeal, the resolution of the school's adjustment/appeal, or the 45th calendar day after the date the school submitted its completed adjustment/appeal to the Secretary for review.⁶

⁶ HEA Section 435(a)(2)(A) and 34 CFR Section 668.17(b)(6)(ii)

- ❖ If the school is subject to possible limitation, suspension, and/or termination (LS&T) due to its official cohort default rate and the school's revised cohort default rate is not below 40.1 percent, and the school does not have any other cohort default rate adjustment/appeals pending before the Department, the school will be referred to the Department's Administrative Actions and Appeals Division for possible LS&T from all Title IV Student Financial Assistance Programs.

Please refer to page 37 of the "Cohort Default Rate Effects" section for more information on the effects of sanctions associated with official cohort default rates.

What if a school's request for loan servicing records or its appeal is sent to the wrong entity?

If a school submits its request for loan servicing records to the wrong entity, the request for loan servicing records will NOT be reviewed and the school could miss the deadline for submitting the request to the correct entity.

The **request for loan servicing records** should be sent to the entity responsible for the loan. The entity responsible for the loan is identified by the guarantor/servicer code that is reported on the loan record detail report for each loan.



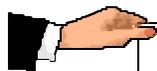
Note

The entities identified by the **guarantor/servicer codes** in the loan record detail report include guaranty agencies, the Department's Default Management Division, and the Department's Direct Loan servicer. "Appendix A" identifies the entity associated with each guarantor/servicer code.

Improper loan servicing and collection appeals should be sent to the Department's Default Management Division at the address on page 211 once the school has received all of the responses to its requests for loan servicing records.

How can an improper loan servicing and collection appeal affect the school's official cohort default rate?

If, as a result of an improper loan servicing and collection appeal, the Department determines that a loan (or loans) should be removed from the school's official cohort default rate calculation, the Department will remove the improperly serviced loan (or loans) from the numerator and the denominator of the school's official cohort default rate calculation.⁷ **This generally lowers the school's official cohort default rate.**



Note

If the school received a **representative sample** of loan servicing records and the Department determines that some of the loans included in the sample were improperly serviced, the Department will extrapolate the results of the review over the entire population of relevant defaulted accounts included in the cohort default rate calculation.⁸

Please refer to page 33 of the "Cohort Default Rate Calculation" section for information on subtracting loans from the cohort default rate calculation.



Note

Even though the Department may alter a school's official cohort default rate calculation(s), subsequent copies of the school's official loan record detail report(s) will not reflect the change. Therefore, it is important to keep a copy of the Department's final determination letter as the record of the school's official cohort default rate(s).

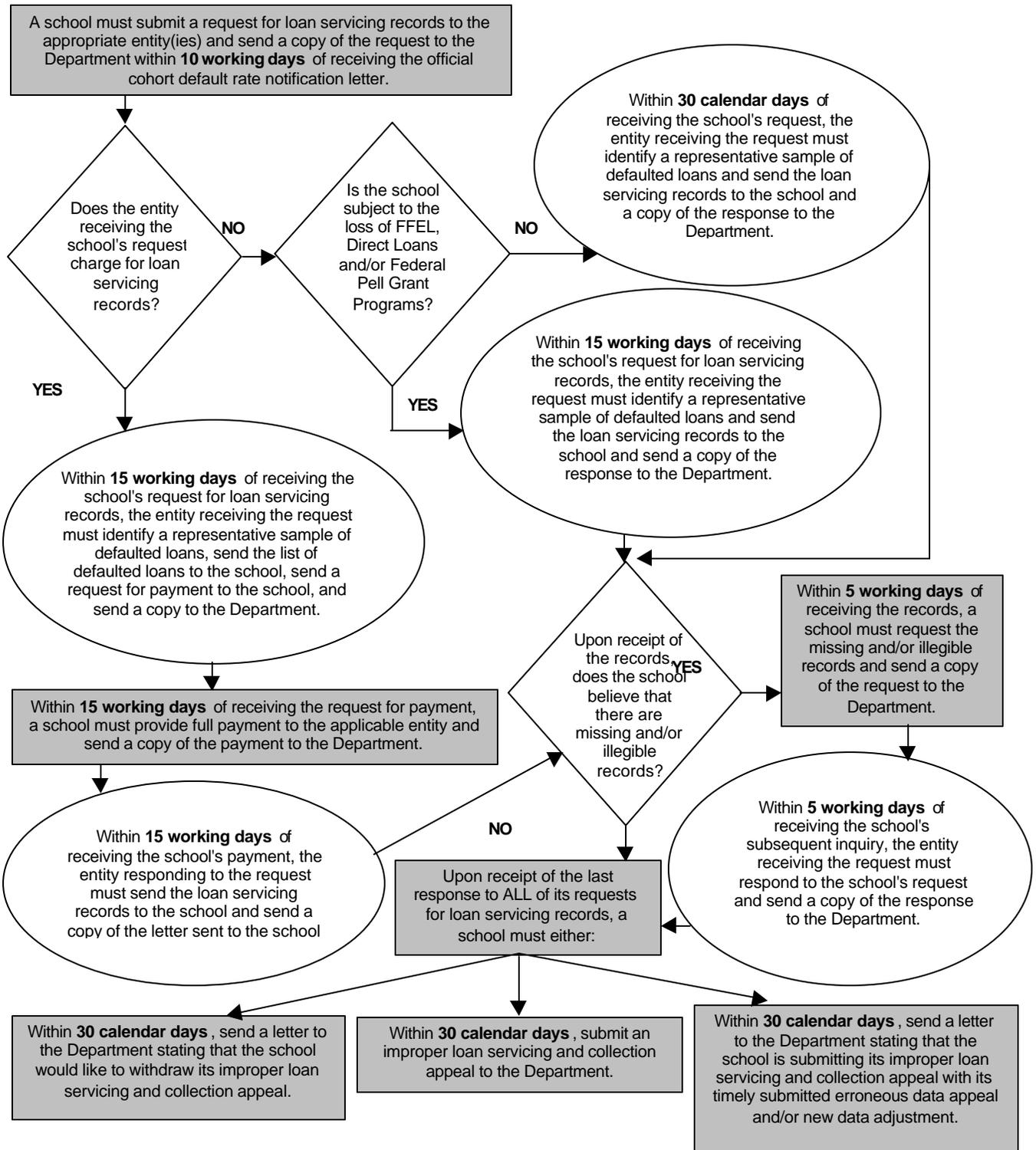
TIMING AND SUBMITTING

What are the time frames and procedures for submitting an improper loan servicing and collection appeal?

Timing is critical when appealing an official cohort default rate on the basis of improper loan servicing and collection. An overview of the time frames for the improper loan servicing and collection appeal process is **shown on the following page.**

⁷ HEA Section 435(m)(1)(B)

⁸ 34 CFR Section 668.17(h)(3)(v)(B)



Diamond = Question
 Box = Time frames for schools
 Oval = Time frames for guaranty agencies/Direct Loan servicer

The following pages provide a step-by-step description of the time frames and procedures associated with an improper loan servicing and collection appeal.



Time frames may overlap. Read ALL steps.

Step 1. **Within ten working days** of receiving its official cohort default rate, a school must review its official cohort default rate notification letter and this Guide to determine if it is eligible to submit an improper loan servicing and collection appeal.

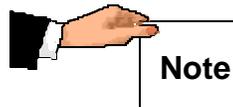
Please refer to page 191 for a detailed discussion regarding which schools are eligible to submit an improper loan servicing and collection appeal.

Step 2. If eligible to submit an improper loan servicing and collection appeal, **within the time frame described in Step 1** (i.e., within ten working days of receiving its official cohort default rate), a school must submit the following to each entity that the school believes holds a loan that could be improperly serviced.

- A **letter** requesting the loan servicing records for defaulted loans included in the school's cohort default rate.

A school should refer to the Sample Request for Loan Servicing Records LETTER on page 216 to assist in developing the letter.

- A copy of the entire **relevant official loan record detail reports(s)**



A school can determine which entity currently maintains the guaranty on the loan by the guarantor/servicer code that is reported on the loan record detail report. The addresses for the relevant entities to which the request must be submitted can be found by cross-referencing the guarantor/servicer code on the loan record detail report with the guarantor/servicer codes in "Appendix A".



Please refer to page 216 for sample cover letter.



Please refer to page 215 for a sample loan record detail report.

Step 3. Within the time frames described in Step 1 (i.e. within ten working days of receiving its official cohort default rate), send the Department's Default Management Division a copy of each letter requesting loan servicing records. A school does NOT need to send a copy of its loan record detail report to the Department.

**Note**

If the school does not meet these **10-working-day** time frames, the school's request will not be processed, and the Department will not review the improper loan servicing and collection appeal. This means the school will NOT be eligible to continue with the improper loan servicing and collection appeal process.

The chart shown on the next page provides an overview of the MATERIAL that should be included in a school's request to the guaranty agency/Direct Loan servicer for loan servicing records.

Within the time frames described in Step 2 on page 202, the following **MATERIAL**, to request loan servicing records, should be sent to the **relevant guaranty agency/Direct Loan servicer**.

The section behind Tab 1 contains:

Tab 1

A letter on the school's letterhead with—

- ◆ the school's OPE ID number;
- ◆ a statement indicating that the school is requesting loan servicing records;
- ◆ a reference to the applicable cohort default rate;
- ◆ the signature of the school's President/CEO/Owner, followed by a signature block providing the signer's name and job title;

AND

- ◆ a notation that a copy of the letter will be sent to the Department's Default Management Division at the address shown on page 211.



Schools only need to send a copy of the letter to the Department's Default Management Division. It is not necessary to send copies of the loan record detail report to the Department's Default Management Division at this time.

Schools should refer to the Sample Request for Loan Servicing Records LETTER, on page 216.

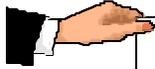
The section behind Tab 2 contains:

Tab 2

Copies of the entire relevant **loan record detail report(s)**.

Schools should refer to the Sample LOAN RECORDS DETAIL REPORT on page 215.

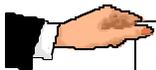
Step 4. If the entity from which the school requested loan servicing records charges a fee for the records, within **15 working days** of receiving the request for payment for the requested loan servicing records, a school must provide full payment. A school that fails to provide full payment within 15 working days will NOT receive the requested records.

**Note**

If the entity responding to the school's request for loan servicing records does NOT charge a fee, please proceed directly to Step 5.

Step 5. Within **five working days** of receiving the loan servicing records, if:

- the **school** finds that a record identified as a part of the representative sample of defaulted loans is missing or illegible and the school wishes to review the record, it must request the missing or illegible record from the entity that identified the record as a part of the sample.

**Note**

A loan servicing record is not considered missing or illegible if all the necessary elements noted in 34 CFR Section 668.17(h)(3)(viii) can be identified. Nor is a loan servicing record considered missing or illegible if collection history documents are present and legible. Therefore, a school may only request additional documentation if the loan servicing record in question does not have the necessary material present to determine if the elements specified in 34 CFR Section 668.17(h)(3)(viii) are present.

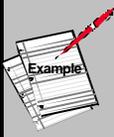
- a school is notified that the requested loan servicing records are currently held by the Department, the school must submit the request for these records to the Department's Default Management Division. The school should submit this request to the address listed on page 211.

Step 6: Within **30 calendar days** of receiving the final response to ALL of the school's requests for loan servicing records, determine whether or not each loan was properly or improperly serviced.

Q. How long does a guaranty agency/Direct Loan servicer have to respond to a school's initial or subsequent request for loan servicing records?

A. The time frames for a guaranty agency/Direct Loan servicer to respond vary. Please refer to page 201 for an overview of the guaranty agency/Direct Loan servicer time frames during the improper loan servicing and collection appeal process or to the "Information for Guaranty Agencies on Adjustments and Appeals" section on page 377 for a more detailed description of the time frames associated with a guaranty agency/Direct Loan servicer response.

Please refer to page 217 for an example of a situation that would warrant the submission of an improper loan servicing and collection appeal.



Please refer to pages 186 through 191 for a description of how to determine if a loan has been properly or improperly serviced.

Step 7: **Within the time frame described in Step 6** (i.e., within 30 calendar days of receiving the final response to ALL of the school's requests for loan servicing records), decide how to proceed.

- A school should **withdraw** from the improper loan servicing and collection appeal process if it is convinced that there are NOT any improperly serviced loans in its cohort default rate calculation;

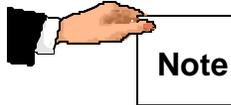
OR

- A school should **continue** with the improper loan servicing and collection appeal process if it is convinced that there ARE improperly serviced loans in its cohort default rate calculation in accordance with 34 CFR Section 668.17(h).

Step 8. Notify the Department whether the school is withdrawing from the appeal process or continuing with the appeal process.

- If the school wants to **withdraw** its improper loan servicing and collection appeal, within **30 calendar days** of receiving the last response to ALL of its requests for loan servicing records, notify the Department's Default Management Division in writing that the school is withdrawing its improper loan servicing and collection appeal.

Please refer to the "Withdrawing an Appeal" section beginning on page 329.



If a school is subject to initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program, and the school's appeal of that loss is unsuccessful, **the school will be liable for certain costs** associated with FFEL Program loans certified and delivered and Direct Loan Program loans originated and disbursed by the school. A school's period of liability with regard to these costs begins 30 calendar days after the school receives notice that it is subject to initial loss of eligibility to participate in the FFEL Program and/or Direct Loan Program. The period of liability ends upon the earlier of the withdrawal of the school's adjustment/appeal, the resolution of the school's adjustment/appeal, or the 45th calendar day after the date the school submitted its completed adjustment/appeal to the Secretary for review.⁹

OR

••

If the school wants to **continue** with the improper loan servicing and collection appeal process, it must:

- ❖ submit the school's improper loan servicing and collection appeal to the Department within **30 calendar days** of receiving the last response to ALL of its requests for loan servicing records;

OR

- ❖ submit the improper loan servicing and collection appeal with a timely initiated and submitted erroneous data appeal and/or new data adjustment.

If a school is submitting an improper loan servicing and collection appeal, erroneous data appeal, and/or new data adjustment, it may submit the adjustments/appeals simultaneously by the latter of:

⁹ HEA Section 435(a)(2)(A) and 34 CFR. Section 668.17(b)(6)(ii)

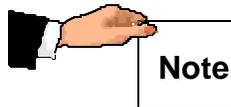
- within **30 calendar days** of receipt of the last response to ALL of the school's requests for loan servicing records;

OR

- within **5 working days** of receipt of the last response to ALL of the school's erroneous data allegations;

OR

- within **5 working days** of receipt of the last response to ALL of the school's new data adjustment allegations.



If a school is appealing its three most recent cohort default rates, it should submit all three improper loan servicing and collection appeals to the Department's Default Management Division in a single mailing.



Please refer to page 219 for a sample list.

Step 9. **Within the time frames described in Step 8**, if the school has decided to continue with the improper loan servicing and collection appeal process, compile a list of the improperly serviced loans that the school wishes to submit to the Department for review.

A school should use the Sample Improper Loan Servicing and Collection SPREADSHEET and SPREADSHEET INSTRUCTIONS on pages 219 and 218, respectively, to assist in the developing the list.

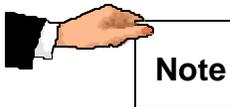


Due date for submitting the appeal to the Department.

Step 10: **Within the time frames described in Step 8**, submit the following to the Department's Default Management Division using the address on page 211:

- a letter indicating that the school is submitting an improper loan servicing and collection appeal;

A school should refer to the Sample Improper Loan Servicing and Collection Appeal LETTER on page 220 to develop the letter.
 - copies of the loan servicing responses from the guaranty agency/Direct Loan servicer;
 - the Improper Loan Servicing and Collection SPREADSHEET as described in Step 9;
- AND
- copies of the relevant loan servicing record(s).



If a school fails to timely submit its improper loan servicing and collection appeal to the Department's Default Management Division, the Department will not review the appeal and will return all appeal-related material to the school.

The following page provides an overview of the MATERIAL that should be included in a school's improper loan servicing and collection appeal.

Please refer to page 220 for a sample letter.

A grey rectangular callout box with a black border. On the left side, there is a small icon of a document with a red pen resting on it. The text is in a bold, black, sans-serif font.

Within the time frames described in Step 8 on page 206, the following MATERIAL, to support an improper loan servicing and collection appeal, should be sent to the Department's Default Management Division at the address shown on page 211.

<p>The section behind Tab 1 contains:</p> <p>A LETTER on the school's letterhead with—</p> <ul style="list-style-type: none"> ◆ the school's OPE ID number; ◆ a statement indicating that the school is submitting an improper loan servicing and collection appeal; ◆ a reference to the applicable fiscal year(s); ◆ a certification sentence that indicates that the information provided in the appeal, under penalty of perjury, is true and correct;¹⁰ ◆ a list of the other adjustment/appeals the school intends to submit to the Department; ◆ the signature of the school's President/CEO/Owner, followed by a signature block providing the signer's name and job title. <p>AND</p> <ul style="list-style-type: none"> ◆ a notation that a copy of the letter will be sent to the relevant entity(ies). <p> Schools only need to send a copy of the letter to the guaranty agency and/or Direct Loan servicer. It is not necessary to send the entire appeal to the guaranty agency and/or Direct Loan servicer.</p> <p>Schools should refer to the Sample Improper Loan Servicing and Collection Appeal LETTER on page 220.</p>	<p>Tab 1</p>
<p>The section behind Tab 2 contains:</p> <p>Copies of the responses to the school's requests for loan servicing records.¹¹</p>	<p>Tab 2</p>
<p>The section behind Tab 3 contains:</p> <p>A SPREADSHEET of all the alleged improperly serviced loans.</p> <p>Schools should refer to the Sample Improper Loan Servicing and Collection Appeal SPREADSHEET and SPREADSHEET INSTRUCTIONS for creating the list on pages 219 and 218, respectively.</p>	<p>Tab 3</p>
<p>The section behind Tab 4 contains:</p> <p>A copy of the alleged improperly serviced loan servicing records.¹²</p> <p> Schools should maintain copies of the loan servicing records submitted to the Department.</p>	<p>Tab 4</p>

 **Note** The Department will review only the information submitted with the improper loan servicing and collection appeal and will not consider information submitted after the regulatory deadlines. The Department will send the school and each involved entity written notification of its decision. **The Department's decision is final and no further administrative review is provided.**

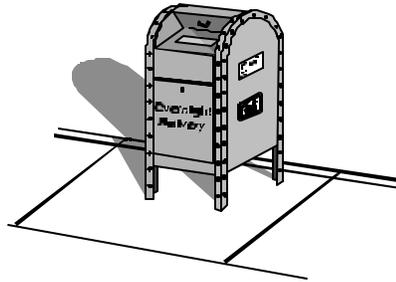
¹⁰ 34 CFR Section 668.17(h)(3)(iv)(F)

¹¹ 34 CFR Section 668.17(h)(3)(iv)(B) and (C)

¹² Id.

If sent by commercial overnight mail/courier delivery, the school's improper loan servicing and collection appeal should be sent to:

U.S. Department of Education
Default Management Division
ATTN: Improper Loan Servicing
and Collection Appeal
Portals Building, Room 6300
1250 Maryland Avenue, SW
Washington, DC 20024



If sent by U.S. Postal Service, the school's improper loan servicing and collection appeal should be sent to:



U.S. Department of Education
Default Management Division
ATTN: Improper Loan Servicing
and Collection Appeal
Portals Building, Room 6300
400 Maryland Avenue, SW
Washington, DC 20202-5353



Note

The Department will not accept any appeal correspondence by facsimile (fax) or e-mail.

The Department recommends that a school send all appeal correspondence return receipt requested or via commercial overnight mail/courier delivery. This will be useful to a school if it is asked to authenticate the timeliness of its appeal. A school should maintain the documentation which verifies the receipt of the appeal related material. In addition, a school should retain copies of all documentation submitted as a part of the appeal process.

PART II: Examples and Sample Material

Part II of the “Improper Loan Servicing and Collection Appeal” section outlines a situation in which a school would benefit from submitting an improper loan servicing and collection appeal. This part also provides sample material that should be referenced by a school when compiling the material that must be submitted by a school during the improper loan servicing and collection appeal process.

CONTENT REFERENCE FOR PART II

EXAMPLE of a situation that warrants a request for Loan Servicing Records.....214

Sample Official LOAN RECORD DETAIL REPORT.....215

Sample Request for Loan Servicing Records LETTER.....216

EXAMPLE of a situation that warrants the submission of an Improper Loan Servicing and Collection Appeal.....217

Improper Loan Servicing and Collection Appeal SPREADSHEET INSTRUCTIONS.....218

Sample Improper Loan Servicing and Collection Appeal SPREADSHEET.....219

Sample Improper Loan Servicing and Collection Appeal LETTER220

EXAMPLE of a situation that warrants a request for Loan Servicing Records

Technology School received notification of its FY 1998 official cohort default rate on September 30, 2000. The school's notification included a hardcopy of its FY 1998 official cohort default rate loan record detail report.

Within 10 working days of receiving its FY 1998 official cohort default rate notification letter, the school:

- determined that the school's FY 1998 official cohort default rate was 23.6 percent and the school was eligible to submit an improper loan servicing and collection appeal;
- reviewed the official loan record detail report to identify which entity(ies) was responsible for responding to the school's request for loan servicing records for defaulted loans (please refer to the sample Official LOAN RECORD DETAIL REPORT on page 215);

According to the school's FY 1998 official loan record detail report, the State Guaranty Agency was the entity responsible for responding to all of the school's requests for loan servicing records for defaulted loans.

- made a copy of entire FY 1998 official LOAN RECORD DETAIL REPORT;

AND

- prepared a LETTER for the State Guaranty Agency, requesting a representative sample of loan servicing records (please refer to the sample LETTER on page 216).

On October 4, 2000, Technology School mailed the MATERIAL, via overnight courier to the State Guaranty Agency at the address found in "Appendix A", and sent a copy of the letter to the Department's Default Management Division at the address on page 211.

Sample Official LOAN RECORD DETAIL REPORT

U.S. DEPARTMENT OF EDUCATION
 NATIONAL STUDENT LOAN DATA SYSTEM (NSLDS)
 COHORT YEAR 1998 OFFICIAL LOAN RECORD DETAIL REPORT (SCHOOL)
 Organization ID Number: 00004000

ATTENTION: TIMOTHY DAVIS
 Name: TECHNOLOGY SCHOOL
 Address: 1212 WEDGEWOOD LANE
 City: LEONARDTOWN
 Country: USA

State: WI
 Postal Code: 12345-6789
 Program Type: FFEL/DL
 Years: 1

Original CLASS Academic
 School Begin Date End Date Level
 First/M.I. D.O.B

Rate Calculation Date: 08/12/2000
 Page No: 1

SSN	Last name	STUDENT	State	Postal Code	Program Type	FFEL/DL	Years	Original	CLASS	Academic			
Originating	Current	Type Stat	Claim Rsn/ Code	NegAm Date	Repay Date	Amount	Guarantor/ Servicer	Loan/Date	Enrollment Stat/ Code Date	Usage			
0444-44-4444	TRADER	SF DU	DF	09/11/1999	01/16/1998	\$ 2,625	111	10/21/1977	00004000	08/25/1997	05/11/1998	1	FB
0555-55-5555	ANDERSON	SF RP		00/00/0000	06/12/1998	\$ 2,625	111	11/18/1979	00004000	02/13/1997	09/11/1997	1	FD
0777-77-7777	HIGGS	SF DU	DF	02/19/1999	07/28/1998	\$ 2,625	111	01/04/1966	00004000	11/04/1995	01/18/1996	1	FB
0777-77-7777	HIGGS	SU DU	DF	02/19/1999	07/28/1998	\$ 4,000	111	01/04/1966	00004000	11/04/1995	01/18/1996	1	EE
0777-77-7777	HIGGS	SU DU	DF	02/19/1999	07/28/1998	\$ 4,000	111	01/04/1966	00004000	11/04/1995	01/18/1996	1	EE
0888-88-8888	MARSHALL	SL DU	DF	05/13/1999	09/07/1998	\$ 2,625	111	08/12/1959	00004000	07/27/1996	03/14/1997	3	FB
0999-99-9999	TRADER	SF DU	DF	02/12/1999	10/10/1997	\$ 2,625	111	01/04/1975	00004000	03/16/1997	08/07/1998	2	FB
0999-99-9999	TRADER	SU DU	DF	02/12/1999	10/10/1997	\$ 4,000	111	01/04/1975	00004000	03/16/1997	08/07/1998	2	EE

Sample Request for Loan Servicing Records LETTER



Technology School

1212 Wedgewood Lane
Leonardtown, Wisconsin 12345-6789
(123) 456-7890

Sample Letter

October 4, 2000

State Guaranty Agency
Guarantor/Service Code 111
ATTN: Bob Bowen
1234 Trueman Road
Lusby, North Carolina 98765-4321

OPE ID#: 000040

Subject: Request for FY 1998 Loan Servicing Records

Dear Mr. Bowen:

Technology School, **OPE ID# 000040**, is requesting the loan servicing records for the defaulted loans guaranteed and currently maintained by your agency and included in our school's official FY 1998 cohort default rate.

Please see the enclosed loan record detail report.

Sincerely,

Timothy Davis

Timothy Davis, President

Enclosures

cc: U.S. Department of Education, Default Management Division

EXAMPLE of a situation that warrants the submission of an
Improper Loan Servicing and Collection Appeal

Technology School received a response from State Guaranty Agency to its request for loan servicing records on November 1, 2000. The State Guaranty Agency did not charge for the loan servicing records. In addition, the State Guaranty Agency was the only guaranty agency from which the school requested loan servicing records.

Within 5 working days of receiving the loan servicing records from the State Guaranty Agency, the school reviewed the records to determine if any of the records were illegible or if the State Guaranty Agency had failed to provide any of the records. Technology School determined that all of the records were provided and each record was legible.

Within 30 calendar days of receiving the loan servicing records from the State Guaranty Agency, the school:

- reviewed the loan servicing records and identified six loans that it believed were improperly serviced in accordance with 34 CFR Section 668.17(h)(3)(viii) (please refer to pages 186 through 191 to determine the parameters associated with improperly serviced loans);
- made a copy of the State Guaranty Agency loan servicing record response;
- made a copy of the servicing records for those loans the school believed were improperly serviced, in accordance with 34 CFR Section 668.17(h);

AND

- prepared a LETTER to the Department's Default Management Division for its improper loan servicing and collection appeal (please refer the Sample Improper Loan Servicing and Collection LETTER on page 220).

On November 27, 2000, Technology School mailed the MATERIAL, via overnight courier, to the Department's Default Management Division at the address on page 211 and sent a copy of the letter to the State Guaranty Agency at the address found in "Appendix A".

Improper Loan Servicing and Collection Appeal SPREADSHEET INSTRUCTIONS

Loan Type Codes	
Code	Description
D1	Direct Loan Subsidized Stafford Loan
D2	Direct Loan Unsubsidized Stafford Loan
SF	FFEL Subsidized Stafford Loan
SL	Supplemental Loans for Student Loan
SU	FFEL Unsubsidized Stafford Loan

Column 4: Enter MM/DD/CCYY (month, day year) to identify when a demand letter (other than a final demand letter) was sent. Leave blank if a demand letter was not sent.

Column 5: Enter MM/DD/CCYY to identify when a telephone call to the borrower was attempted. Leave blank if a telephone call was not attempted.

Column 6: Enter MM/DD/CCYY to identify when pre-claims assistance was requested by the lender for an FFEL loan. Leave blank if pre-claims assistance was not requested. Enter "Not required" if the loan is a Direct Loan Program loan.

Column 7: Enter MM/DD/CCYY to identify when a final demand letter was sent. Leave blank if a final demand letter was not sent.

Column 8: Enter "Yes" or "No" to indicate if the borrower's address was known by the lender.

Column 9: If borrower's address was not known, enter MM/DD/CCYY to identify the date that skip tracing or certification of skip tracing occurred. Leave blank if no skip tracing or certification occurred. If borrower's address was known, enter "Not Required."

Column 10: Enter "X" if an illegible loan servicing record was provided. Leave blank if record was legible.

Column 11: Enter "X" if a loan servicing record was identified as a part of the sample but was not provided by the relevant entity. Leave blank if record was provided.

Column 12: Enter "X" if a loan servicing record is improperly serviced. Leave blank if record was properly serviced. **Properly serviced loans in accordance with 34 CFR Section 668.17(h) are NOT to be included in a school's appeal to the Department.**

Column 13: Enter the guarantor/servicer code associated with the loan on the loan record detail report. These codes can be found in "Appendix A."

Record all loans being appealed to the U.S. Department of Education using a spreadsheet software application such as Excel or Lotus 1-2-3.

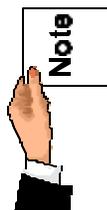
The spreadsheet should be on 8 1/2" x 11" paper in a landscape (horizontal) layout. A sample spreadsheet follows these instructions.

Header: Enter **FY** *insert year(s)* **Improper Loan Servicing and Collection Appeal in accordance with 34 CFR Section 668.17(h)** in the center of the header area. In the left-hand area, enter the school's name and the school's OPE ID number.

Footer: Enter the date the appeal was prepared in the left side of the footer area. Set up automatic pagination in the right side of the footer area so that the specific page number and the total number of pages show on each page, for example: page 1 of 10 pages.

Sort: The report should be a listing of all **improperly** serviced loans in order by:

1. Guaranty/Servicer code listed on the loan record detail report;
2. Borrower's Social Security number.



Only the allegations listed on the school's spreadsheet will be reviewed. If a borrower has more than one defaulted loan and allegations of improper loan servicing and collection are being made on more than one of the defaulted loans, each loan must be listed separately on the spreadsheet.

On Row 1, enter exactly the same column names in exactly the same order as listed on the sample spreadsheet. Ensure that column names appear at the top of each page.

On Row 2 and below, include the following data for each loan for which the school is alleging improper loan servicing and collection.

Column 1: Enter the borrower's Social Security number (SSN) using hyphens to separate the numbers (example: 000-88-0000).

Column 2: Enter the borrower's name.

Column 3: Enter the loan type. Use the codes shown in the next column to identify the type of loan.

Sample Improper Loan Servicing and Collection Appeal **SPREADSHEET**

Note: This is a sample spreadsheet.
(See instructions on the previous page.)

Technology School OPE ID 00040

FY 1997 Improper Loan Servicing and Collection Appeal in accordance with 34 CFR Section 688.17(h)

1. Borrower's SSN	2. Borrower's Name	3. Type of loan (Use codes on instructions)	4. Date demand letter (other than final demand letter) sent (MM/DD/CCYY or leave blank)	5. Date telephone call attempted (MM/DD/CCYY or leave blank)	6. Date pre-claims assistance requested (MM/DD/CCYY leave blank or enter N/A if DL)	7. Date final demand letter sent (MM/DD/CCYY or leave blank)	8a. Address known? (Yes or No)	8b. Date of skip tracing activity (MM/DD/CCYY or Not Required)	9. Illegible loan servicing record provided (or leave blank)	10. No loan servicing record provided (or leave blank)	11. Improperly serviced (or leave blank)	12. GA/servicer code on loan record detail report (Appendices A & B)
777-77-7777	Kyle Higgs	SF	04/08/1997	05/07/1997		11/07/1997	Yes	Not required			X	111
777-77-7777	Kyle Higgs	SU	04/08/1997	05/07/1997		11/07/1997	Yes	Not required			X	111
777-77-7777	Kyle Higgs	SU	04/08/1997	05/07/1997		11/07/1997	Yes	Not required			X	111
888-88-8888	Joey Marshall	SL	12/08/1997	01/06/1998	05/16/1998		Yes	Not required			X	111
999-99-9999	Clarke Trader	SF	11/10/1997		12/15/1997	01/04/1998	Yes	Not required			X	111
999-99-9999	Clarke Trader	SU	11/10/1997		12/15/1997	01/04/1998	Yes	Not required			X	111

Sample Improper Loan Servicing and Collection Appeal **LETTER**



Technology School

1212 Wedgewood Lane
Leonardtwn, Wisconsin 12345-6789
(123) 456-7890

November 27, 2000

Sample Letter

U.S. Department of Education
Default Management Division
Attn: Improper Loan Servicing and Collection Appeal
Portals Building, Room 6300
400 Maryland Avenue, SW
Washington, DC 20202-5353

OPE ID#: 000040

Subject: FY 1998 Improper Loan Servicing and Collection Appeal

Dear Default Management Division:

Technology School, **OPE ID# 000040**, is submitting an appeal of its official FY 1998 cohort default rate based on allegations of improperly serviced loans.

Please see the enclosed correspondence, spreadsheet, and improperly serviced loans, as identified on the spreadsheet.

I, the undersigned, certify under penalty of perjury that all information submitted in support of this improper loan servicing and collection appeal is true and correct.

Technology School has also timely submitted an uncorrected data adjustment and an erroneous data appeal.

Thank you for your consideration.

Sincerely,
Timothy Davis
Timothy Davis, President

Enclosures

cc: State Guaranty Agency