Comments on the Supplemental Report to the Office of Special Counsel sent from the U.S. Department of Education on January 20, 2023

OSC File No. DI-21-000028

Question 1. On page 6, the agency report states that the process allows for lenders to appeal the R2 determination. Can you clarify if this point is contained in any agency SOP, and if so, can you provide us with the relevant text?

Comments: The response by the U.S. Department of Education (‘Education’) agrees with my previous response to the Office of Special Counsel (‘OSC’) from May 16, 2022, that the HEAL Claim Review Process, Lender Policy Memorandum L-2003-1, dated November 14, 2002, allows for lenders to appeal an R2 determination. Significantly, an appeal can be made only once and must be made within 30 calendar days of the date of the HEAL Program letter notifying them of the rejection of the re-submitted claim.

Question 2. With respect to Borrower 3 from the report, it is our understanding that Navient/Sallie Mae was the HEAL servicer and the Title IV consolidation lender. This being the case, is there a distinction between a denial from Navient as the HEAL lender and a denial as the Title IV consolidation lender? Is that distinction noted in the documentation associated with the file? If the denial had come from Navient/Sallie Mae as the Title IV lender, would that be permissible under relevant law?

Comments: The response by Education in regard to this question is a bit murky and omits a few key points. As indicated in HEAL Lender Policy 1993-14 provided to Navient with the October 19, 2016 R2 letter, borrowers may also consolidate HEAL loans with Title IV loans under section 428C of the Higher Education Act of 1965, as amended (‘HEA’).

In its response, Education indicates that neither the HEA nor the HEAL statute provide that the payment of a claim to a lender in one program is dependent on what they do in the other program. However, when approached chronologically, if Sallie Mae had properly included the borrower’s HEAL loans in the 1993 Title IV Consolidation Loan; which preceded the 1997 HEAL-to-HEAL Consolidation Loan, then there would be no 1997 HEAL-to-HEAL Consolidation Loan because there would be no HEAL loans to consolidate. All of the borrower’s underlying HEAL loans that were disbursed between August 14, 1986 through May 5, 1989, would have been included in the 1993 Title IV Consolidation Loan.

In its response, Education indicates that there is a copy of the 1993 Title IV Consolidation Loan in its file, but there are no other records relating to that application or any evidence that the borrower followed through on the application or that Sallie Mae declined to make the loan. However, in e-mail correspondence between Navient and Education from December 6, 2016 through December 15, 2016 (attached), Navient shows multiple times that it is unaware that a HEAL borrower could consolidate his/her HEAL loans into a Title IV Consolidation Loan:

- A Navient Loan Servicing Specialist III incorrectly indicated on December 6, 2016, that the HEAL loan was not included in the (Title IV) consolidation due to HL loans could only be included in HL consolidation requests at that time.
- A Navient Sr. Litigation Analyst and custodian of records incorrectly indicated on December 15, 2016, that if a borrower desired to consolidate a HEAL loan with a non-HEAL loan, then the
borrower had to seek that consolidation loan through ED because it was not available through servicers/lenders. Shockingly, through its response Navient appears unaware that the 1993 Title IV Consolidation Loan Application is in fact a Sallie Mae FFEL Consolidation ‘Smart Loan’ Application form and that HEAL loans could be consolidated into a Title IV Consolidation Loan using this form.

In addition, for Education to state that the file relating to Borrower #3’s HEAL loans does not include any other records relating to that application (1993 Title IV Consolidation Loan) or any evidence that the borrower followed through on the application or that Sallie Mae declined to make the loan is just absurd. Why would documents from a 1993 Title IV FFEL Consolidation Loan be included in a 1997 HEAL-to-HEAL Consolidation ‘HEAL Relief’ Loan file? Title IV FFEL Consolidation Loans allow for the consolidation of HEAL loans with Title IV loans, but not the other way around. Title IV loans cannot be consolidated with HEAL loans through the HEAL-to-HEAL Consolidation Loan Program; that program simply consolidates HEAL loans only. Records relating to the 1993 Title IV Consolidation Loan or any evidence that the borrower followed through on the application or that Sallie Mae declined to make the loan, would be stored in the 1993 Title IV Consolidation Loan file. And now that Navient is no longer an Education servicer, this information may be found in the Great Lakes Imaging Database, Maximus as the replacement servicer for Navient, or the Illinois Student Assistance Commission as the guaranty agency.

Lastly, although the Department states that nothing in the rules of the HEAL Program make the question of whether Sallie Mae should have made a Consolidation loan under the separate FFEL Program to the borrower in 1993, the Department regulations at 34 CFR §682.100(a)(4) The Federal Consolidation Loan Program, encouraged making loans to borrowers for the purpose of consolidating loans, including HEAL loans authorized by subpart I of Part A of Title VII of the Health Services Act.