

R626-1. Purpose: The purpose of this rule is to provide the terms and conditions under which UHEAA will provide Lender-of-Last-Resort (LLR) loans to borrowers who have otherwise been unable to obtain a subsidized or unsubsidized Federal Stafford Loan or Federal PLUS Loan from a lender participating in the UHEAA loan program.

R626-2. References

- 2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 12.
- 2.2. U.S. Code, Title IV of the Higher Education Act of 1965, as amended.
- 2.3. U.S. Department of Education. Code of Federal Regulations, 34 CFR Part 682.401(c)

R626-3. General

3.1. Status of LLR Loans: An LLR loan, regardless of the lender or the funding source, has all the characteristics of a conventional FFEL Program loan except as provided herein or in directives of the U.S. Secretary of Education (Secretary).

3.2. Identification of the Need for LLR Loans - Institutional Certification: UHEAA shall maintain and publish a list of known FFEL program lender participants and encourage potential borrowers toward such lenders. The starting point for determining that an LLR loan is needed is the inability of a student (or his or her parent) to obtain a conventional FFEL loan. Generally, this determination is made on a student-by-student basis. However, to ensure that LLR services are provided in a timely manner, UHEAA will use criteria and processes developed by the U.S. Department of Education (Department) to certify institutional eligibility to make LLR loans. UHEAA will work with the institution to provide, at a minimum:

3.2.1. The number and percentage of the institution's FFEL loan applicants who are expected to be unable to obtain a conventional FFEL loan;

3.2.2. The names of the FFEL lender or lenders that provided FFEL loans in the past to students attending the institution (or their parents) which, based on available information, have indicated that they will no longer provide conventional FFEL loans to these individuals. And for each such lender, an estimate of the number of students who will be impacted by the lender's decision; and

3.2.3. The names of other FFEL lenders that UHEAA or the institution contacted to request FFEL loan access for students at the institution for the 2008-2009 academic year.

3.3. Institution-wide Certification - UHEAA Response: Any institution-wide certification of the need for LLR loans by an institution located in Utah must be made by UHEAA. When so determined:

3.3.1. UHEAA will attempt to identify FFEL lenders that will make conventional FFEL loans.

3.3.2. If no lenders are identified, UHEAA will seek FFEL lenders that will make LLR loans.

¹ Adopted by the UHEAA Board of Directors and amended July 14, 1995, November 14, 1996. Replaced December 11, 2008.

3.3.3. If no FFEL lender will make LLR loans, UHEAA will itself, to the extent practicable, make LLR loans using available unrestricted net assets, after taking into consideration other anticipated programmatic uses of the assets.

3.3.4. Finally, if UHEAA lacks the financial capacity to make LLR loans with its own funds, it will request federal Advances from the Secretary to make LLR loans. UHEAA will provide the Secretary with a detailed description of UHEAA's administrative capability, a detailed rationale of why UHEAA does not have sufficient funds to issue LLR loans itself, a description of attempts to locate other non-federal funds; and data supporting UHEAA's financial capability to provide LLR loans to the borrowers for which it is responsible.

3.4. Eligibility Requirements: When a student (or group of students) is unable to obtain a conventional FFEL loan, pursuant section 428(j) and 34 CFR 682.401(c), UHEAA is statutorily responsible for all students attending the institutions in Utah and all Utah resident students attending eligible out-of-state institutions.

3.4.1. UHEAA may make (regardless of the funding source), or arrange for an eligible lender to make, LLR loans only to students attending an institution located in Utah or to a Utah resident attending an institution in another state.

3.4.2. UHEAA is responsible for providing LLR loans to students and parents of students who attend school or reside in Utah. UHEAA will not establish any additional eligibility criteria what these individuals must meet in order to obtain LLR loans. So long as every individual who meets FFELP eligibility requirements obtains a FFEL LLR loan, UHEAA may use services of lenders that agree to make LLR loans only to particular categories of individuals. UHEAA remains responsible for ensuring that these individuals are served if its LLR lenders choose not to lend.

3.4.3. Where an institution has campuses in more than one state, it may, based on its administrative process, request and receive LLR loans from UHEAA if either its main campus is in Utah or the requesting branch campus is in Utah.

3.5. Borrower Rights and Responsibilities: An LLR loan made by a FFEL program lender, UHEAA using its own funds, or UHEAA using federal Advances provides the borrower the same rights, benefits, and obligations that apply to a conventional FFEL loan (e.g., discharges and cancellations, loan consolidation, etc.)

3.6. Lender and Loan Holder Rights, Benefits, and Obligations: When an LLR loan is made by a traditional FFEL lender, or by UHEAA using funds other than federal Advances, all of the rights, obligation, benefits, and requirements that apply to conventional FFEL loans apply to the lender (including UHEAA acting as an LLR lender) and to any subsequent holders, except that the LLR loan carries a default insurance (and reinsurance rate) of 100 percent.

3.6.1. If UHEAA makes LLR loans using its own capital, it will assess the borrower the origination fee and the default fee, and will pay the lender fee, as required by H.R. 5715.

3.6.2. UHEAA will not direct any federal Advances to make LLR loans to a lender.

3.7. UHEAA Obligations: In the event UHEAA makes a LLR loan, it will comply with all the requirements applicable to a FFEL lender under the Higher Education Act (HEA). LLR loans made with UHEAA's own funds will not be assigned to the Department. Such loans are not subject to the assignment authority granted the Department in section 428(j) of the HEA.

3.8. Federal Advances Protection, Use, and Assignment of LLR Loans Made with Federal Advances: Federal funds issued for the purpose of making LLR loans will be deposited into a special reserve account of UHEAA's Federal Fund. The receipt and use of such funds will be fully auditable. Such funds will not be used for any purpose other than making LLR loans by UHEAA. The federal government will be the beneficial owner of the loans made with these funds, and UHEAA will hold and treat the loan as a federal asset.

3.8.1. LLR loans made by UHEAA with federal Advances are federal assets and under the terms and conditions of the Advances Agreement, UHEAA may not sell, securitize, or pledge these loans.

3.8.2. UHEAA will assign these loans to the Department upon demand by the Secretary. Assignment of an LLR loan, in this context, is the transfer of title to the loan. UHEAA will promptly notify a borrower that has received an LLR loan made with federal Advances the loan has been assigned to the Department.

3.9. Minimum and Maximum Loan Amount: The minimum amount for which UHEAA will authorize a loan guarantee for an LLR loan is \$200. A loan made under UHEAA's LLR program may not exceed the borrower's financial need, as determined under Part F of Title IV of the HEA.

3.10. Loan Originator: LLR loans guaranteed by UHEAA shall be originated by eligible FFEL lenders under agreement with UHEAA for LLR loan purposes or by UHEAA, as guarantor, from its own funds or from federal Advances.

3.11. Hours of Operation: For LLR purposes, UHEAA shall maintain office hours from 8:00 a.m. to 5:00 p.m., Monday through Friday, except on state and federal holidays.

3.12. Availability Information: UHEAA will provide written notification of the availability of its LLR loans to all schools located in Utah.

3.13. Survey of FFEL Lenders: Before UHEAA implements its LLR program, it will survey by letter, telephone, e-mail or personal contact all FFEL lenders with which UHEAA has an agreement, as well as any other FFEL lender that has expressed an interest, to identify a lender or lenders that will provide conventional FFEL loans to some or all eligible borrowers in Utah. UHEAA will seek a response from every lender. UHEAA will not issue any LLR loans until the survey is completed.

3.14. Issuance of LLR Loans: Pursuant to Section 428(j), where the need to issue an LLR loan becomes necessary, either UHEAA or an eligible LLR lender will issue a loan.

3.15. Written Statement from LLR Lender: Upon implementation of the LLR program, UHEAA shall obtain from each lender with whom it enters into an LLR agreement a written statement explaining why the lender is unwilling to make conventional FFEL loans, in general or specific cases, but is willing to make LLR loans. UHEAA shall provide a copy of such written statement to the Department.

3.16. Agreements with LLR Lenders: Any agreement between UHEAA and a lender for LLR loan purposes will clearly state the scope and time frame of the lender's LLR commitment. The agreement will require the lender to notify UHEAA of its intent to terminate the LLR agreement at least 60 days prior to the effective date of the termination, and to fully disburse any loan first disbursed prior to that effective date.

3.17. Selection of LLR Lenders: UHEAA will enter into LLR agreements with any and all eligible lenders willing to participate in its LLR program, provided:

3.17.1. UHEAA has ensured that the lender is prepared to continue making LLR loans under UHEAA's LLR program and,

3.17.2. UHEAA has undertaken a review process to examine and verify the lender's financial and administrative capability to serve as an LLR lender. UHEAA will review and examine lender information, including audited financial statements, to determine whether the lender has available capital or the ability to raise the necessary capital to make LLR loans, as well as the lender's administrative capability, resources, and expertise to make and service those loans.

3.18. **UHEAA LLR Loans Made Directly:** In the event there are no eligible FFEL lenders willing to make LLR loans under agreement with UHEAA, UHEAA will undertake to make LLR loans directly, using available unrestricted net assets or federal Advances. UHEAA will make only LLR loans directly.

3.19. **Origination and Servicing Capabilities:** UHEAA is a bundled agency with both guarantee and LPP secondary market programs. It currently originates and services loans for FFEL lenders and services loans for the LPP secondary market in full compliance with FFEL program rules.

3.20. **Types of Loans Available in LLR Program:** UHEAA's LLR program will make available to eligible borrowers subsidized and unsubsidized Federal Stafford Loans and Federal PLUS Loans.

3.21. **UHEAA Reports to the Department:** UHEAA will comply with Department requirements for reporting on LLR loans. This will include use of LIDs and LLR flags for loan tracking and, at a minimum, for each LLR loan made with federal Advances, the name of the borrower, the institution, disbursement amounts and dates, type of loan, etc. In addition, UHEAA will provide the verification of school certification.

R626-4. Application Procedures

4.1. **Documentation:** To apply for an LLR loan, the student or school shall provide UHEAA with documentation verifying an eligible student has been unable to obtain a subsidized or unsubsidized Federal Stafford Loan for attendance at an eligible school from at least two eligible lenders. UHEAA provides origination services on behalf of lenders. UHEAA will notify the student and institution of the first denial so that they have the opportunity to find another lender that will make a conventional FFEL loan to the borrower prior to seeking an LLR loan.

4.2. **Approval and Notification:** Upon receipt of documentation described in 4.1, UHEAA shall approve the LLR loans and notify the school of the approval.

4.3. **Information Packet:** Once the LLR loans have been approved, UHEAA shall send LLR loan information to the student either electronically or by mail.

4.4. **Information Packet Contents:** The LLR information packet shall include:

4.4.1. an application and promissory note for an LLR loan with instructions to complete the application form and return it to UHEAA; and

4.4.2. counseling materials which include information relating to the borrower's loan obligation.

4.5. **Notification of Final Status:** Once UHEAA receives the original, properly completed application and promissory note for an LLR loan, UHEAA shall inform the student as to the final status of the student's application within 60 days of receiving the properly completed form.

R626-5. Operational Procedures

5.1. Information Dissemination: UHEAA shall disseminate to schools and lenders participating in the UHEAA loan program a copy of the final UHEAA LLR rule and notice of the effective date. The information will be available on the UHEAA web site www.uheaa.org and UHEAA will issue news releases to major newspapers and media outlets in Utah.

5.2. Contact Person: The contact person for LLR information and services is:

Richard Robbins, Director of Operations
Utah Higher Education Assistance Authority (UHEAA)
60 South 400 West
Salt Lake City, Utah 84101
Tel: (801-321-7270)
E-mail: rrobbins@utahsbr.edu

5.3. LLR Operating Hours and Services: The UHEAA LLR program may be contacted weekdays, except on state or federal holidays, from 8:00 a.m. to 5:00 p.m. Mountain Time by telephone (877-336-7378); in-person at 60 South 400 West, Salt Lake City, Utah 84101, or electronically at www.uheaa.org.

5.4. Expected Time to Originate and Disburse an LLR Loan: The normal time required to originate and disburse an LLR loan is ten business days. In no case will the origination and disbursement process take longer than 60 days.

5.5. Counseling for LLR Loan Recipients: UHEAA must ensure that borrowers receiving LLR loans are appropriately counseled on their loan obligations. UHEAA will ensure that each institution complies with its responsibilities for initial loan counseling. UHEAA supports counseling services at Utah institutions through training for financial aid personnel at Utah schools. UHEAA also provides detailed information packets to prospective borrowers and eligible schools.