

GUARANTY AGENCY LENDER REVIEWS

SELECTION OF LENDER & SERVICER CANDIDATES FOR REVIEW:

Q (D): Does a GA that has a review open an extra year because of slow lender response have to review that same lender the next year, in order to complete a review every two years?

A (D): A GA may substitute another lender to review with the approval of the Regional office.

Q (S): Regarding reviews done by ED and the GA, is there a schedule upon which you (ED) operate on? If ED is already doing a comprehensive review, GA may not have to do the review.

A (S): Use the information as a request to substitute for the review. Each case is different. Maybe ED did only a focused review of a certain area. ED encourages the sharing of review schedules, and encourages doing so electronically.

Q (S): Regarding joint reviews between the guaranty agency and ED, how are these reviews being coordinated? Who writes the report(s)? If there is a joint report done and the Department issues the report, does that satisfy the guaranty agency's responsibility to write a report, etc.?

A (S): Coordinate with the GLOS cognizant office. As for report writing on these reviews, ED handled the ED Form 799 billing issues, while the GA handled the reconciliation issues where there were discrepancies with GA records. Both ED and GA reports were issued. Reviewers kept in contact with each other and shared information until closure.

Q (S): Who does the lender respond to?

A (S): The lender responds to the writer of the report. Then the reviewers coordinate with each other to make sure that each has all of the data.

Q (S): What if the lender or servicer is outside of the region?

A (S): First contact the cognizant region for that location.

REQUEST FOR INFORMATION:

Q (S): When reviewing lenders, do guaranty agencies need to request a listing of board members and conflicts of interest? What about for small lenders? Is there a statutory requirement for this?

A (S): We don't ask for this information from the small lenders. There's not much of an impact. Guaranty agencies need to determine how deep to delve into the issues prior to the review.

Q (S): Could you describe "conflict of interest?" Is it a monetary interest?

A (S): For example, there was an issue regarding a large secondary market whose Board member was also an attorney being paid for performing collection work for the secondary market.

Q (S): If the attorney was paid at a fair market wage, would there be an issue?

A (S): Possibly. Each relationship is going to be different when you look at it on its own merit.

Q (S): Will ED take into consideration our (guaranty agency) opinion if there is a rational explanation?

A (S): We will certainly consider your explanation but we also want, when it comes to conflict of interest, to review the details.

Q (C): (GLOS to GAs) How many of the GAs ask for documents prior to their reviews and are the lenders generally cooperative?

A (C): (GAs' Response) It is usually not a problem getting internal audits. Management reports are harder to get. Many of the GAs present indicated that they often have difficulty getting records from lenders who use multiple servicers. The GAs get the documents eventually, but it is time consuming. GAs suggest that GLOS inform lenders that they need to provide documents and records to GA reviewers.

A (C): (GLOS' Response) When the GAs experience problems obtaining information from lenders, contact the cognizant region of GLOS for assistance.

Q (S): What if a lender refuses to provide the requested information?

A (S): Contact the cognizant regional office.

Q (S): As a follow-up to the previous question, do you want to include that fact (lender noncooperation) in the report? A phone call? A letter?

A (S): Any way. But ED prefers it in writing. We prefer that the entity know that the GA has come to ED so that when ED calls the entity, it won't be a surprise to them.

**GLOS TECHNICAL ASSISTANCE SESSIONS
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[A = Atlanta; B = Boston; C = Chicago; D = Dallas; N = New York; S = San Francisco]

Q (S): Regarding ED Form 799 review where the portfolio has a combination of different guaranty agencies and servicers, some lenders do not provide backup data for loans guaranteed by another guarantor when reviewing a specific section of the 799 on a 799 submission that have some of GA's loans. For example, to review Part III consolidation for subsidized interest, the guaranty agency needs to review eligibility of loans for subsidized interest. GA did not provide the documentation for the consolidation. What is the GA's authority to look at loans? Right now we're reviewing the 799 and anything reported on the form but still lenders refuse.

A (S): (After consultation with Brian Siegel, Office of General Counsel, ED, on GA access to other GA's data) There is nothing of which he is aware in FFELP law or regulations, including the Privacy Act (which pertains to Federal agencies, not GA's) that would preclude one GA from looking at data from another, especially when the other GA has the only data pertaining to the item being checked, e.g., they are the only ones who have guaranteed a consolidation loan.

Regulations (682.410(c)) state that a GA will take such measures and establish such controls as are necessary to ensure its vigorous enforcement of all Federal, State and GA requirements, including agreements . . . to conduct reviews and calculate liabilities to the Secretary . . .

In order to fulfill this regulatory requirement, GA's need access to the data underlying the billings, or ED Form 799. Section 682.401 (b)(7) states that an eligible lender may participate in the program of the GA under reasonable criteria established by the GA. GA's should have guarantee agreements with the lenders. ED would expect that this provision would be addressed clearly. If the language is broad, ED would expect that the GA explain the terms to the lender. GA's also have manuals in which access to these types of records can be spelled out. Having said all this, if the lender still denies access, the lender can be referred to the cognizant Regional Office.

Q (D): Our GA asks for contracts with servicers as part of the review process. These are often not provided so we use a checklist to determine which responsibilities the GA has vs. the servicer. Is this appropriate?

A (D): If you are satisfied with the information then this is okay with the Department.
Comment: Other GAs did not consider this a problem area because the lender is responsible. The Department will assist any GA in the pursuit of needed contracts or other information.

Q (S): Regarding lender mergers where portions of portfolios are being combined into an operating number, how are GAs breaking that out and looking at the portfolio? Prior to merger? The last five years? Other?

A (S): We would encourage a "before and after" simply because we would want to make sure that what moved, moved properly.

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GA Comment (S): For mergers, lenders are hesitant to provide documentation on a portfolio that is guaranteed by other guarantors. When we go back during a five-year period, oftentimes the GA doesn't have anything to do with the operating number when reviewing that portfolio 5 years ago when we didn't have any volume in the 799. Also we are finding lenders hesitant to provide information on portfolio guaranteed by other guarantors.

ACCESS TO LENDER SEARCH REPORTS AND NSLDS DATA:

Q (S): Will the guaranty agencies get access to the Lender Search Reports? Will we ever?

A (S): At this time, guaranty agencies need to request the Lender Search Reports from Greenville, TX. We don't know yet whether guaranty agencies will get access in the future.

Q (C): Can GAs get a Lender Search Report (LSR) data in an electronic format? If not attainable in electronic format form, can GLOS download data and provide to GAs?

A (C): There is no process at this time to allow GAs to download LSR data from E-Systems. GAs can make a request to GLOS Regional Directors for GLOS to download LSR data and provide to GAs.

Q (C): The GA would like a copy of the reasonability edits used on the ED Form 799. When conducting a review the GA does not want to duplicate efforts of ED.

A (C): GLOS provided the questioner with a copy of the reasonability edits.

Q (D): Will the Department offer any kind of reasonability software with respect to the 799?

A (D): No. The Department is willing to share the reasonability techniques that it has developed in conjunction with the software.

Q (C): (GLOS to GAs) Do GAs obtain NSLDS information for reviews?

A (C): (GAs' Response) Yes!

Q (C): (GLOS to GAs) Can GAs obtain data from NSLDS?

A (C): (GAs' Response) Yes!

GA Comment (C): GA is double checking its claim process (file maintenance) using NSLDS data.

REVIEW PROCESS:

Q (C): Does GLOS include the required annual lender audits in program reviews?

A (C): Yes, the annual lender audits are reviewed as part of pre-review planning.

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GA Comment (C): GAs would like to review a lender's annual audit prior to conducting a review, but do not have access to the audits.

A (C): If a GA cannot obtain the annual audit from the lender, contact GLOS. GLOS will provide a copy.

GA Comment (C): GAs usually concentrate their efforts on file review as it pertains to their claim processing. GAs do not spend much time looking at the 799.

A (C): It's not a stretch to expect that the review guide will reflect how GLOS conducts lender reviews. GLOS reviews emphasize verifying the accuracy of the 799 in a number of ways. Though it is only a guide GLOS would hope that because of the monetary risk involved, GAs would place more emphasis on reviewing the 799.

Q (C): Does GLOS review line item detail at the borrower level when reviewing the 799? If yes, how long does it take?

A (C): Yes! This process is easier if we can obtain electronic data from lenders and use our audit software. This will be covered in detail in a later session. Reviewing line item detail can take a lot more time.

Q (C): The GA review becomes public record after a period of time. If review information is requested, the GA is required to notify the lender that the information has been requested and by whom it has been requested. For this reason, the GA only keeps primary documentation that supports a finding. Is this a problem for GLOS (i.e. when GLOS reviews the GA lender review process)?

A (C): The GA needs to keep their review reports, work papers to document the scope of the review, and documents to support the review findings. It is GLOS' view that the GA does not have to keep a copy of every document reviewed if there is not a finding or problem.

Q (C): GA is making only a notation of no finding. Is it necessary to keep review information on no findings? And, how long must documentation be kept?

A (C): Not necessary to keep review information if there is no finding, only record of data looked at and lender staff interviewed and statement that there is no finding of non-compliance.

GA Comment (C): Because GAs concentrate more on file review, the GAs may want to consider going into more detail in the review of the ED Form 799 using ED's GA Lender Review Guide to give the GAs direction in the review of the ED Form 799.

GA Comment (C): GA concentrates its efforts on file review as it is important to the GA's claims processing. The GA does not spend much time on the ED Form 799.

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Q (C): If GAs wait to close a review until adjustments in response to review findings have been made on the 799, the review will stretch out over possibly several months. Is this what GLOS does before closing a review?

A (C): Yes! GLOS makes sure that the adjustments have been made on the 799. GLOS also verifies that the adjustments on the 799 are correct. GLOS does this by reviewing the lenders' work papers for the adjustments. If the adjustments are not correct, GLOS requires the lenders to correct the adjustments and does not close the review until the adjustments are made correctly and appear on the 799. It can take two or more billing quarters for GLOS to close a review after a review report is issued in order to get all adjustments required made correctly and reported on the 799.

Q (D): Are GAs required to review "special programs" a lender may have?

A (D): The review report should include a description of the program(s). The PEPS system has a comment area for this.

GUARANTY AGENCY LENDER REVIEW GUIDE:

Q (C): When is the new GA Lender Review Guide coming out?

A (C): GLOS has gotten feedback from GA regarding the guide and will issue the Guide later this year. A deficiency code guide, which updates the deficiency codes, will also be issued.

Q (D): When will the new lender guide be available?

A (D): The end of summer.

ED Comment (S): (Linda Stoddard, ED) As we try to finalize review guides, need decision on when to finalize them: Final draft was done prior to the Reauthorization. Do we not publish so we could include Reauthorization; or do we need more time when negotiated rulemaking is over to include new regulations? Decisions have not been made.

Q (D): Is the lender review guide being developed in conjunction with Guaranty Agencies?

A (D): Yes. Many of the GAs have been consulted.

Comment: Use NCHELP to form input committee.

Q (C): Does the GA Lender Review Guide include information as to what to look for in respect to the Master Promissory Note (MPN), in particular for loan sales? How will MPN data be tracked?

A (C): The Review Guide is a work in progress. It is not known what all it will contain.

GA Comment (C): Include suggestion for reviewing MPN or create a dialog with GAs on "best practices" ways to handle reviewing the MPN.

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GA Comment (C): Since the Lender Review Guide is not a required procedure manual, it would be helpful if it listed several “best practices” in the sections, rather than showing only one way to do certain processes. This would also help/serve as a document to compare other ways/approaches to ensure compliance.

Q (D): Does the lender review guide have liability thresholds for liability assessment?

A (D): No. There are no thresholds contained in the review guide.

Q (D): Anything in the lender review guide that will be a surprise?

A (D): No.

MISCELLANEOUS:

Q (S): Will ED be sending out to lenders, after the session is over, information on what we are authorized to receive, coming from the Department of Education to all lenders?

A (S): No definite answer was given.