

(e) In the case of a married couple, the loans of a spouse that are to be included in a Consolidation loan are considered eligible loans for the other spouse.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, and 1091)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 25745, May 17, 1994; 59 FR 33349, June 28, 1994; 59 FR 61215, Nov. 29, 1994; 60 FR 61756, 61815, Dec. 1, 1995; 60 FR 65021, Dec. 18, 1995; 62 FR 63433, Nov. 28, 1997; 64 FR 18975, Apr. 16, 1999; 64 FR 58952, Nov. 1, 1999; 65 FR 65619, 65691, Nov. 1, 2000]

EFFECTIVE DATE NOTE: At 65 FR 65691, Nov. 1, 2000, §682.201 was amended by adding new paragraphs (a)(5) and (a)(7), and by revising redesignated paragraphs (a)(6) introductory text, (a)(6)(i), and (a)(6)(ii), effective July 1, 2002. For the convenience of the user, the added and revised text is set forth as follows:

§ 682.201 Eligible borrowers.

(a) * * *

(5) The suspension of collection activity has been lifted from any loan on which collection activity had been suspended based on a conditional determination that the borrower was totally and permanently disabled under §682.402(c).

(6) In the case of a borrower whose prior loan under title IV of the Act was discharged after a final determination of total and permanent disability, the student must—

(i) Obtain certification from a physician that the borrower is able to engage in substantial gainful activity;

(ii) Sign a statement acknowledging that the FFEL loan the borrower receives cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates; and

* * * * *

(7) In the case of a borrower whose prior loan under title IV of the HEA was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled, the borrower must—

(i) Comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section; and

(ii) Sign a statement acknowledging that—

(A) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when the new loan is made unless that impairment substantially deteriorates; and

(B) Collection activity will resume on any loans in a conditional discharge period, as described in paragraph 682.402(c)(16).

* * * * *

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest. The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) of this section.

(1) Stafford Loan Program. (i) For loans made prior to July 1, 1994, if the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on any FFEL Program loan, and the first disbursement is made—

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(1) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(2) 9 percent.

(iii) For a Stafford loan for which the first disbursement is made before October 1, 1992—

(A) If the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning

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before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement is made on or after October 1, 1992, but before December 20, 1993, if the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(v) For a Stafford loan for which the first disbursement is made on or after December 20, 1993 and prior to July 1, 1994, if the borrower, on the date the promissory note is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is the rate provided in paragraph (a)(1)(ii)(B) of this section.

(vi) For a Stafford loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1995, for a period of enrollment that includes or begins on or after July 1, 1994, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10; or

(B) 8.25 percent.

(vii) For a Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 the interest rate is a variable rate applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30

period, plus 2.5 percent during the in-school, grace and deferment period and 3.10 percent during repayment; or

(B) 8.25 percent.

(viii) For a Stafford loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period plus 1.7 percent during the in-school, grace and deferment periods and 2.3 percent during repayment; or

(B) 8.25 percent.

(2) *PLUS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under § 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992 and prior to July 1, 1994, the interest rate is a variable rate, applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 10 percent.

(iv) For a loan for which the first disbursement is made on or after July 1, 1994 and prior to July 1, 1998, the interest rate is a variable rate applicable to each July 1-June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1-June 30 period, plus 3.10 percent; or

(B) 9 percent.

(v) For a loan for which the first disbursement is made on or after July 1, 1998, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 9 percent.

(vi)(A) Beginning on July 1, 2001, the interest rate on the loans described in paragraphs (a)(2)(ii) through (iv) of this section is a variable rate applicable to each July 1–June 30, as determined on the preceding June 26, and is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus—

(1) 3.25 percent for loans described in paragraph (a)(2)(ii) of this section; or

(2) 3.1 percent for loans described in paragraphs (a)(2)(iii) and (iv) of this section.

(B) The interest rates calculated under paragraph (a)(2)(vi)(A) of this section shall not exceed the limits specified in paragraphs (a)(2)(ii)(B), (a)(2)(iii)(B), and (a)(2)(iv)(B) of this section, as applicable.

(3) *SLS Program.* (i) For a combined repayment schedule under §682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under §682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 imme-

diately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 11 percent.

(iv)(A) Beginning on July 1, 2001, the interest rate on the loans described in paragraphs (a)(3)(ii) and (iii) of this section is a variable rate applicable to each July 1–June 30, as determined on the preceding June 26, and is equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last calendar week ending on or before such June 26; plus—

(1) 3.25 percent for loans described in paragraph (a)(3)(ii) of this section; or

(2) 3.1 percent for loans described in paragraph (a)(3)(iii) of this section.

(B) The interest rates calculated under paragraph (a)(3)(iv)(A) of this section shall not exceed the limits specified in paragraphs (a)(3)(ii)(B) and (a)(3)(iii)(B) of this section, as applicable.

(4) *Consolidation Program.* (i) A Consolidation Program loan made before July 1, 1994 bears interest at the rate that is the greater of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(B) 9 percent.

(ii) A Consolidation loan made on or after July 1, 1994, for which the loan application was received by the lender before November 13, 1997, bears interest at the rate that is equal to the weighted average of interest rates on the loans consolidated, rounded upward to the nearest whole percent.

(iii) For a Consolidation loan for which the loan application was received by the lender on or after November 13, 1997 and before October 1, 1998, the interest rate for the portion of the loan that consolidated loans other than HEAL loans is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held prior to June 1 of each year plus 3.10 percent; or

(B) 8.25 percent.

(iv) For a Consolidation loan for which the application was received by the lender on or after October 1, 1998, the interest rate for the portion of the

loan that consolidated loans other than HEAL loans is a fixed rate that is the lesser of—

(A) The weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of one percent; or

(B) 8.25 percent.

(v) For a Consolidation loan for which the application was received by the lender on or after November 13, 1997, the annual interest rate applicable to the portion of each consolidation loan that repaid HEAL loans is a variable rate adjusted annually on July 1 and must be equal to the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter ending June 30, plus 3 percent. There is no maximum rate on this portion of the loan.

(5) *Actual interest rates under the Stafford loan, SLS, PLUS, and Consolidation Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1)–(4) of this section.

(6) *Refund of excess interest paid on Stafford loans.*

(i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992, to a borrower with no outstanding FFEL Program loans—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of the adjustment for a calendar quarter is equal to—

(1) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(2) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(3) Divided by 4;

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall credit any amounts computed under paragraph (a)(6)(i)(A) of this section to—

(1) The Secretary, for amounts paid during any period in which the borrower is eligible for interest benefits;

(2) The borrower's account to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31; or

(3) The Secretary, for a borrower who on the last day of the calendar year is delinquent for more than 30 days.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(1) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(2) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(3) Divided by 4;

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section;

(C) For any other quarter, the holder of the loan shall, within 30 days of the

end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated under paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31;

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii)(B), (C) and (D) of this section, if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(7) *Conversion to Variable Rate.*

(i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6)(i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 preceding each 12-month period is equal to the sum of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii)(A) In connection with the conversion specified in paragraph (a)(6)(ii) of this section for any period prior to the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of—

(1) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(2) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv)(A) The holder of a loan being converted under paragraph (a)(7)(iii)(A) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion, provide the borrower with—

(1) A notice informing the borrower that the loan is being converted to a variable interest rate;

(2) A description of the rate to the borrower;

(3) The current interest rate; and

(4) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(v) The notice may be provided as part of the disclosure requirement as specified under § 682.205.

(vi) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with this section. This increase in the principal balance of a loan is called "capitalization."

(2) Except as provided in paragraph (b)(4) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly. Capitalization is again permitted when repayment is required to begin or resume. A

lender may capitalize accrued interest under paragraph (b)(2) (i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest—

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

(5) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

(c) *Fees for FFEL Program loans.* (1) A lender may charge a borrower an origination fee on a Stafford loan not to exceed 3 percent of the principal amount of the loan. Except as provided in paragraph (c)(2) of this section, a lender must charge all borrowers the same origination fee.

(2)(i) A lender may charge a lower origination fee than the amount specified in paragraph (c)(1) of this section to a borrower whose expected family contribution (EFC), used to determine eligibility for the loan, is equal to or less than the maximum qualifying EFC for a Federal Pell Grant at the time the loan is certified or to a borrower who qualifies for a subsidized Stafford loan. A lender must charge all such borrowers the same origination fee.

(ii) With the approval of the Secretary, a lender may use a standard comparable to that defined in paragraph (c)(2)(i) of this section.

(3) If a lender charges a lower origination fee on unsubsidized loans under paragraph (c)(1) or (c)(2) of this section, the lender must charge the same fee on subsidized loans.

(4)(i) For purposes of this paragraph (c), a lender is defined as:

(A) All entities under common ownership, including ownership by a common holding company, that make loans to borrowers in a particular state; and

(B) Any beneficial owner of loans that provides funds to an eligible lender trustee to make loans on the beneficial owner's behalf in a particular state.

(ii) If a lender as defined in paragraph (c)(4)(i) charges a lower origination fee to any borrower in a particular state under paragraphs (c)(1) or (c)(2) of this section, the lender must charge all such borrowers who reside in that state or attend school in that state the same origination fee.

(5) Shall charge a borrower an origination fee on a PLUS loan of 3 percent of the principal amount of the loan;

(6) Shall deduct a pro rata portion of the fee (if charged) from each disbursement; and

(7) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan—

(i) That is returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) That is repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(iii) For which a loan check has not been negotiated within 120 days of disbursement; or

(iv) For which loan proceeds disbursed by electronic funds transfer or master check in accordance with

§ 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) *Insurance Premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 1 percent of the principal amount of the loan, if that charge is provided for in the promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to \$100 to cover the administrative costs of making a loan to a borrower under § 682.209(e) for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower fails to pay all or a portion of a required installment payment within 15 days after it is due.

(g) *Collection charges.* (1) If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower or any endorser pay costs incurred by the lender or its agents in collecting installments not paid when due, including, but not limited to—

- (i) Attorney's fees;
- (ii) Court costs; and
- (iii) Telegrams.

(2) The costs referred to in paragraph (g)(1) of this section may not include routine collection costs associated with preparing letters or notices or with making personal contacts with the borrower (e.g., local and long-distance telephone calls).

(h) *Special allowance.* Pursuant to § 682.412(c), a lender may charge a borrower the amount of special allowance paid by the Secretary on behalf of the borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1087-1, 1091a)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22475, Apr. 29, 1994; 59 FR 61427, Nov. 30, 1994; 61 FR 60486, Nov. 27, 1996; 62 FR 63434, Nov. 28, 1997; 64 FR 18976, Apr. 16, 1999; 64 FR 58953, Nov. 1, 1999; 66 FR 34762, June 29, 2001]

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guaranty agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guaranty agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* (1) In the case of an undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Stafford Loan Program in combination with the Federal Direct Stafford/Ford Loan Program may not exceed the following:

- (i) \$2,625 for a program of study of at least a full academic year in length.
- (ii) For a one-year program of study with less than a full academic year remaining, the amount that is the same ratio to \$2,625 as the—

Number of semester, trimester, quarter, or clock hours enrolled	
Number of semester, trimester, quarter, or clock hours in academic year.	