

limitation entered into under the authority of statutes applicable to Title IV of the HEA that governs the FFEL programs, including, any applicable function described in the definition of third-party servicer in 34 CFR part 668; originating, guaranteeing, monitoring, processing, servicing, or collecting loans; claims submission; or billing for interest benefits and special allowance.

*Totally and permanently disabled.* The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

*Undergraduate student.* A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

*Unsubsidized Stafford loan.* A loan made after October 1, 1992, authorized under section 428H of the Act for borrowers who do not qualify for interest benefits under § 682.301(b) but do qualify for special allowance under § 682.302.

*Write-off.* Cessation of collection activity on a defaulted FFEL loan due to a determination in accordance with applicable standards that no further collection activity is warranted.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141; E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235))

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 22454, Apr. 29, 1994; 59 FR 25745, May 17, 1994; 59 FR 33348, June 28, 1994; 59 FR 61215, Nov. 29, 1994; 60 FR 61756, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 64 FR 18975, Apr. 16, 1999; 64 FR 58952, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 66 FR 65691, Nov. 1, 2000; 67 FR 67078, Nov. 1, 2002; 69 FR 12276, Mar. 16, 2004]

#### § 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under § 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is

eligible to receive an unsubsidized Stafford loan, if the student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or unsubsidized Stafford loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that participates in the Stafford Loan Program, the student must—

(i) Receive a determination of need for a subsidized Stafford loan; and

(ii) If the determination of need is in excess of \$200, have made a request to a lender for a subsidized Stafford loan;

(3) For purposes of a dependent undergraduate student's eligibility for an additional unsubsidized Stafford loan amount, as described at § 682.204(d), is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., denial of a PLUS loan to a parent based on adverse credit, the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a PLUS loan does not constitute an exceptional circumstance;

(4)(i) Reaffirms any FFEL loan amount on which there has been a total cessation of collection activity,

including all principal, interest, collection costs, legal costs, and late charges that have accrued on that amount up to the date of reaffirmation.

(ii) For purposes of this section, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(A) Signing a new promissory note that includes the same terms and conditions as the original note signed by the borrower or repayment schedule; or

(B) Making a payment on the loan.

(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

(iii) In the case of a borrower whose previous loan under title IV of the Act was discharged due to a total and permanent disability on or after July 1, 2001 and before July 1, 2002, meets the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section. If the borrower applies for another loan within three years from the date that the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the previously discharged loan before receiving the new loan.

(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).

(8) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, the student meets the requirements under 34 CFR part 668.32(e).

(9) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(b) *Parent borrower.* (1) A parent borrower, is eligible to receive a PLUS Program loan, other than a loan made under §682.209(e), if the parent—

(i) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(ii) Provides his or her and the student's social security number;

(iii) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.33;

(iv) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.35 and meets the requirements of judgment liens that apply to the student under 34 CFR 668.32(g)(3);

(v) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668;

(vi) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), and (a)(7) of this section, as applicable; and

§ 682.201

34 CFR Ch. VI (7-1-05 Edition)

(vii) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history or obtains an endorser who has been determined not to have an adverse credit history as provided in paragraph (b)(2)(ii) of this section.

(2)(i) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(ii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt; or

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(iii) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(iv) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(v) The lender must retain a record of its basis for determining that extenuating circumstances existed. This record may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than \$500.

(3) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of "parent" in 34 CFR 688.2 and the spouse of a parent who remarried, if that spouse's income and assets would

have been taken into account when calculating a dependent student's expected family contribution.

(c) *Consolidation program borrower.* (1) An individual is eligible to receive a Consolidation loan if the individual—

(i) On the loans being consolidated—

(A) Is, at the time of application for a Consolidation loan—

(1) In a grace period preceding repayment;

(2) In repayment status;

(3) In a default status and has either made satisfactory repayment arrangements as defined in applicable program regulations or has agreed to repay the consolidation loan under the income-sensitive repayment plan described in § 682.209(a)(7)(viii);

(B) Not subject to a judgment secured through litigation, unless the judgment has been vacated; or

(C) Not subject to an order for wage garnishment under section 488A of the Act, unless the order has been lifted;

(ii) Certifies that no other application for a Consolidation loan is pending;

(iii) Agrees to notify the holder of any changes in address; and

(iv)(A) Certifies that the lender holds at least one outstanding loan that is being consolidated; or

(B) Applies to any eligible consolidation lender if the borrower—

(1) Has multiple holders of FFEL loans; or

(2) Has been unable to receive from the holder of the borrower's outstanding loans, a Consolidation loan or a Consolidation loan with income-sensitive repayment.

(2) A married couple is eligible to receive a Consolidation loan in accordance with this section if each—

(i) Agrees to be held jointly and severally liable for the repayment of the total amount of the Consolidation loan;

(ii) Agrees to repay the debt regardless of any change in marital status; and

(iii) Meets the requirements of paragraph (c)(1) of this section, and only one must have met the requirements of paragraph (c)(1)(iv) of this section.

(d) A borrower's eligibility to receive a Consolidation loan terminates upon

receipt of a Consolidation loan except that—

(1) Eligible loans received prior to the date a Consolidation loan was made and loans received during the 180-day period following the date a Consolidation loan was made, may be added to the Consolidation loan based on the borrower's request received by the lender during the 180-day period after the date the Consolidation loan was made;

(2) A borrower who receives an eligible loan after the date a Consolidation loan is made may receive a subsequent Consolidation loan; and

(3) A Consolidation loan borrower may consolidate an existing Consolidation loan only if the borrower has at least one other eligible loan made before or after the existing Consolidation loan that will be consolidated.

(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; 66 FR 44007, Aug. 21, 2001; 68 FR 75428, Dec. 31, 2003]

**§ 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 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