

§ 682.207

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all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely on the information provided by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) Except in the case of a Consolidation loan, in determining the amount of the loan to be made, in no case may the loan amount exceed the lesser of the amount the borrower requests, the amount certified by the school under § 682.603, or the loan limits under § 682.204.

(d)(1) The lender must ensure that each loan is supported by an executed legally-enforceable promissory note as proof of the borrower's indebtedness.

(e) *Security, endorsement, and co-makers.* (1) A FFEL Program loan must be made without security or endorsement, except as provided in paragraph (e)(2) of this section.

(2) A Federal PLUS Program Loan may be made to an eligible borrower with an endorser who is secondarily liable for repayment of the loan.

(3) A Federal Consolidation loan, based on an application received prior to July 1, 2006, may be made to two eligible spouses provided both borrowers agree to be jointly and severally liable for repayment of the loan as co-makers.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a FFEL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

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§ 682.207 Due diligence in disbursing a loan.

(a)(1) This section prescribes procedures for lenders to follow in disbursing Stafford and PLUS loans. This section does not prescribe procedures for a refinanced SLS or PLUS Program loan made under § 682.209 (e) or (f). With respect to FISL and Federal PLUS loans, references to the "guaranty agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.408. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender—

(i)(A) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guaranty agency, except with the agency's prior approval; and

(B) Must disburse a Stafford or PLUS loan in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or that is made co-payable to the borrower and the school for attendance at which the loan is intended, and requires the personal endorsement or other written certification of the borrower in order to be

cash or deposited in an account of the borrower at a financial institution;

(B) If authorized by the guarantor, electronic funds transfer to an account maintained in accordance with §668.163 by the school as trustee for the lender, the guaranty agency, the Secretary, and the borrower, that requires the approval of the borrower. A disbursement made by electronic funds transfer must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(C) If the school and the lender agree, a master check from the lender to the institution of higher education to an account maintained in accordance with §688.163 by the school as trustee for the lender. A disbursement made by a master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement;

(iii) May not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 10 days after the agent receives the proceeds from the lender.

(v) Shall disburse—

(A) Except as provided in paragraph (b)(1)(v) (C)(I) and (D) of this section, directly to the school;

(B) In the case of a Federal PLUS loan —

(I) By electronic funds transfer or master check from the lender in accordance with the disbursement schedule provided by the school to an account maintained in accordance with §668.163 by the school as trustee for the lender. A disbursement made by electronic funds transfer or master check must be accompanied by a list of the names, social security numbers, and loan amounts for the parent or student borrowers who are receiving a portion of the disbursement and the names and social security numbers of the students

on whose behalf the parents are borrowing parent PLUS loans.

(2) By a check from the lender that is made co-payable to the institution and the parent borrower, for a parent PLUS loan, or student borrower, for a student PLUS loan, directly to the institution of higher education.

(C) In the case of a student enrolled in a study-abroad program approved for credit at the home institution in which the student is enrolled, if the student requests—

(I) A Stafford loan directly to the student only after verification of the student's enrollment with the home institution by the lender or guaranty agency; or

(2) To the home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the check or complete an electronic funds transfer authorization.

(D) In the case of a student enrolled in an eligible foreign school, if the foreign school requests, a Stafford loan directly to the student only after verification of the student's enrollment by the lender or guaranty agency.

(vi) Except as provided in paragraph (f) of this section, may not disburse a second or subsequent disbursement of a Federal Stafford loan to a student who has ceased to be enrolled; and

(vii) May disburse a second or subsequent disbursement of an FFEL loan, at the request of the school, even if the borrower or the school returned the prior disbursement, unless the lender has information that the student is no longer enrolled.

(2)(i) A lender or guaranty agency must verify a borrower's enrollment at the foreign school, or a borrower's enrollment in a study-abroad program, prior to each disbursement of Stafford loan funds directly to a student by—

(A) For a student enrolled at a foreign school—

(I) The guaranty agency accessing the Department's Postsecondary Education Participants System (PEPS) Database (or any successor system) and confirming that the foreign school the student is to attend is certified to participate in the FFEL program.

(2) For a new student, contacting the foreign school the student is to attend

in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify the student's admission to the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.

(3) For a continuing student, contacting the foreign school the student is to attend in accordance with procedures specified by the Secretary, by telephone, e-mail or facsimile to verify that the student is still enrolled at the foreign school for the period for which the loan is intended at the enrollment status for which the loan was certified.

(B) For a student enrolled in a study-abroad program, contacting the home institution in which the student is enrolled by telephone, facsimile or e-mail to verify—

(I) For a new student, the student's admission to the study-abroad program for the period for which the loan is intended at the enrollment status for which the loan is certified.

(2) For a continuing student, that the student is still enrolled in the study-abroad program for the period for which the loan is intended at the enrollment status for which the loan is certified.

(ii) The lender or guaranty agency that is verifying enrollment at the institution the student is to attend must maintain the following information in the student's file:

(A) The name and telephone number of the school representative contacted;

(B) The date of the contact;

(C) The enrollment period;

(D) Whether enrollment was verified at the enrollment status for which the loan was certified; and

(E) Any other pertinent information received from the school.

(iii) Guaranty agencies and lenders must coordinate their activities to ensure that the requirements of this paragraph are met prior to making any direct disbursement to a student.

(iv) If a lender disburses a Stafford loan directly to the borrower for attendance at an eligible foreign school, or to a borrower enrolled in a study-abroad program approved for credit at the home institution, as provided in paragraphs (b)(1)(v)(D) and (b)(1)(v)(D)(I) of this section, the lender

must, at the time of disbursement, notify the foreign school, for a borrower attending a foreign school, or the home institution in which the student is enrolled, for a borrower enrolled in a study-abroad program, of—

(A) The name and social security number of the student;

(B) The type of loan;

(C) The amount of the disbursement, including the amount of any fees assessed the borrower;

(D) The date of the disbursement; and

(E) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

(3) Except as provided in paragraph (b)(1)(v)(C)(2) of this section, neither a lender nor a school may obtain a borrower's power-of-attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power-of-attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower pursuant to the borrower's endorsement or written certification under paragraph (b)(1)(ii)(A) of this section.

(c) Except as provided in paragraph (e) of this section, a lender must disburse any Stafford or PLUS loan in accordance with the disbursement schedule provided by the school as follows:

(1) Disbursement must be in two or more installments.

(2) No installment may exceed one-half of the loan.

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

(d) If one or more scheduled disbursements have elapsed before a lender makes a disbursement and the student is still enrolled, the lender may include in the disbursement loan proceeds for previously scheduled, but unmade, disbursements.

(e) A lender must disburse the loan in one installment if the school submits a

schedule for disbursement of loan proceeds in one installment as authorized by § 682.604(c)(8).

(f) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis only if—

(1) The school certified the borrower's loan eligibility before the date the student became ineligible and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible;

(2) The student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in § 682.604(c)(5); and

(3) In the case of a second or subsequent disbursement, the student graduated or successfully completed the period of enrollment for which the loan was intended.

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§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, establishing the terms of repayment, and reporting a borrower's enrollment and loan status information.

(b)(1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, no less frequently than every 90 days or quarterly

after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)-(v) of this section within 90 days of its acquisition of the loan.

(3) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in § 682.402(e)(14), an eligible lender shall suspend credit bureau reporting for a period not to exceed 120 days while the lender determines the enforceability of a loan.

(i) If the lender determines that a loan does not qualify for a discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must—

(A) Notify the credit bureau of its determination; and

(B) Comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(ii) [Reserved]

(4) If, within 3 years of the lender's receipt of an identity theft report, the lender receives from the borrower evidence specified in § 682.402(e)(3)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

(c)(1) A lender shall respond within 30 days after receipt to any inquiry from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower or a student PLUS loan borrower is no longer enrolled at an institution of higher education on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(3)(i) If the borrower disputes the terms of the loan in writing and the