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State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary, or a similar agreement with a guaranty agency.

Subsidized Stafford Loan. A Stafford loan that qualifies for interest benefits under § 682.301(b) and special allowance under § 682.302.

Substantial gainful activity. A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Third-party servicer. Any State or private, profit or nonprofit organization or any individual that enters into a contract with a lender or guaranty agency to administer, through either manual or automated processing, any aspect of the lender's or guaranty agency's FFEL programs required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or 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—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 682.200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 682.201 Eligible borrowers.

(a) *Student Stafford borrower.* Except for a refinanced SLS/PLUS loan, 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, court costs, attorney fees, and late charges that have accrued on that amount up to the date of reaffirmation.

(ii) For purposes of paragraph (a)(4) 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.

(6) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability, the borrower 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) If a borrower receives a new FFEL loan, other than a Federal Consolidation Loan, within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 682.402(c)(3)(ii), 34 CFR 674.61(b)(3)(i), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resume repayment on the previously discharged loan in accordance with § 682.402(c)(5), 34 CFR 674.61(b)(5), or 34 CFR 685.213(b)(4), or acknowledge that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(7) In the case of a borrower whose prior loan under title IV of the HEA was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010, 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

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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.

(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) *Student PLUS borrower.* A graduate or professional student who is enrolled or accepted for enrollment on at least a half-time basis at a participating school is eligible to receive a PLUS Loan on or after July 1, 2006, if the student—

(1) Meets the requirements for an eligible student under 34 CFR 668;

(2) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of this section, if applicable;

(3) Has received a determination of his or her annual loan maximum eligibility under the Federal Subsidized and Unsubsidized Stafford Loan Program or under the Federal Direct Subsidized Stafford/Ford Loan Program and Federal Direct Unsubsidized Stafford/Ford Loan Program, as applicable; and

(4) Does not have an adverse credit history in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section, or obtains an endorser who has been determined not to have an adverse credit history, as provided for in paragraph (c)(1)(vii) of this section.

(c) *Parent PLUS 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

(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 (c)(2)(ii) of this section.

(viii) Has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(2)(i) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national consumer reporting agency. 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 (c)(1) of this section, a “parent” includes the individuals described in the definition of “parent” in 34 CFR 668.2 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.

(d) *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)(6)(iii) or the income-based repayment plan described in § 682.215;

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

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

(D) Not in default status resulting from a claim filed under § 682.412.

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

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

(2) A borrower may not consolidate a loan under this section for which the borrower is wholly or partially ineligible.

(e) 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 before or after the date a Consolidation loan is made may receive a subsequent Consolidation loan;

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

(4) If the consolidation loan is in default or has been submitted to the guaranty agency for default aversion, the borrower may obtain a subsequent consolidation loan under the Federal Direct Consolidation Loan Program for purposes of obtaining an income contingent repayment plan or an income-based repayment plan; and

(5) A FFEL borrower may consolidate his or her loans (including a FFEL Consolidation Loan) into the Federal Direct Consolidation Loan Program for the purpose of using—

(i) The Public Service Loan Forgiveness Program; or

(ii) For FFEL Program loans first disbursed on or after October 1, 2008 (including Federal Consolidation Loans that repaid FFEL or Direct Loan program Loans first disbursed on or after October 1, 2008), the no accrual of interest benefit for active duty service members.

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

[57 FR 60323, Dec. 18, 1992]

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