

Dated: December 23, 2003.

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Assistant Secretary, Office of Postsecondary Education.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations parts 674, 682, and 685 as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421–429, unless otherwise noted.

■ 2. Section 674.5 is amended by:

■ A. In paragraph (c)(3)(i)(D), adding the word “or” after the semi-colon.

■ B. In paragraph (c)(3)(i)(E), removing “; or” and adding, in its place, a period.

■ C. Removing paragraph (c)(3)(i)(F).

■ D. In paragraph (c)(3)(ii)(C), removing the word “or”.

■ E. In paragraph (c)(3)(ii)(D), removing the period and adding, in its place, “; or”.

■ F. Adding a new paragraph (c)(3)(ii)(E).

■ The addition reads as follows:

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

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(c) * * *

(3) * * *

(ii) * * *

(E) Assigned to and conditionally discharged by the Secretary in accordance with § 674.61(b).

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■ 3. Section 674.61 is amended by revising the section heading to read as follows:

§ 674.61 Discharge for death or disability.

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PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 4. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.102 [Amended]

■ 5. Section 682.102(e)(1) is amended by removing from the last sentence the words “nursing professions or perform certain kinds of national or community service”, and adding, in their place, the words “child care professions”.

■ 6. Section 682.201 is amended by revising paragraphs (b)(1)(vi) and (vii) and (b)(2), removing paragraph (b)(1)(viii), and adding paragraph (b)(3) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(1) * * *

(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 (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 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.

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■ 7. Section 682.206 is amended by revising paragraph (e)(1) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(e) * * *

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

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■ 8. Section 682.207 is amended by:

■ A. Removing paragraph (b)(1)(vi) immediately following paragraph (b)(1)(iii).

■ B. Adding a paragraph (b)(1)(iv).

■ C. In paragraph (b)(1)(v)(B)(1), in the first sentence, removing the word “a” and adding, in its place, the word “an”.

■ D. In paragraph (b)(1)(vi), removing the reference to “(f)(1)” and adding, in its place, the reference “(f)”.

■ E. Adding a paragraph (b)(2).

The additions read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender.

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(2) 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.

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■ 9. Section 682.209 is amended by:

■ A. In paragraph (a)(2)(v), removing the reference to “(a)(2)(i)” and adding, in its place, the reference to “(a)(2)(ii)”.

■ B. Revising paragraph (a)(3)(ii)(B).

The revision reads as follows:

§ 682.209 Repayment of a loan.

(a) * * *

(3) * * *

(ii) * * *

(B) 60 days from the expiration of a deferment or forbearance period;

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