

information required under this section not previously provided.

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

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1083(a))

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**§ 682.206 Due diligence in making a loan.**

(a) *General.* (1) Loan-making duties include determining the borrower's loan amount, approving the borrower for a loan, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note (except with respect to subsequent loans made under an MPN).

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school in regard to that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that 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 requirements for Consolidation loans.* (1) Prior to making any payments to pay off a loan with the proceeds of a Consolidation loan, the lender shall—

(i) Obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

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

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

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

(ii) Consistent with the requirements of § 682.205(i)(7), notify the borrower, upon receipt of all information necessary to make the Consolidation loan, of the borrower's option to cancel the Consolidation loan, and the deadline by which the borrower must notify the lender that he or she wishes to cancel

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the loan. The lender must allow the borrower no less than 10 days from the date of the notice to cancel the loan.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1)(i) 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) (i) 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

cashied 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 § 688.163 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 § 688.163 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