



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

MAR 22 2011

GEN-11-07

Subject: Guidance on Participation in the William D. Ford Federal Direct Loan (Direct Loan) Program

Summary: This letter provides guidance on several issues related to school participation in the Direct Loan Program.

Dear Colleague:

The following topics are discussed in this letter:

- Participation in one or more components of the Direct Loan Program
- Limiting student or parent borrowing
- Denial of Direct PLUS Loans based on adverse credit
- Awarding additional Direct Unsubsidized Loan funds to dependent students
- Student FAFSA required for parent Direct PLUS Loans

With the exception of the new requirement that a student complete a Free Application for Federal Student Aid (FAFSA) before the parent can receive a Direct PLUS Loan, we remind schools participating in the Direct Loan Program for the first time that the guidance in this letter is consistent with the policies that applied to schools under the Federal Family Education Loan (FFEL) Program.

Participation in one or more components of the Direct Loan Program

In this section, we remind schools of their options for offering Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), and Federal Direct PLUS Loans (Direct PLUS Loans) to their student and parent borrowers.

Direct Subsidized Loans and Direct Unsubsidized Loans

Direct Subsidized Loans and Direct Unsubsidized Loans are two components of a single loan program. Therefore, a school may not choose to make only Direct Subsidized Loans or only Direct Unsubsidized Loans available to its eligible undergraduate and graduate students. Some schools may have believed that it was permissible to offer only Direct Subsidized Loans or only Direct Unsubsidized Loans. We will be revising the *Application to Participate in the Title IV Programs* to more clearly reflect the fact that Direct Subsidized Loans and Direct Unsubsidized Loans are part of a single program, and that a school may not participate in only one of the program's two components. In the meantime, for any school whose Eligibility and Certification Approval Report (ECAR) incorrectly indicates that it participates in only one of those components (only Direct Subsidized Loans or only Direct Unsubsidized Loans), we will be updating the school's ECAR to show that the school participates in both components.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

We understand that a small number of schools may be offering their students only Direct Subsidized Loans. We expect these schools to begin offering students the maximum amounts the students are eligible to borrow in both Direct Subsidized Loans and Direct Unsubsidized Loans as soon as possible, with the understanding that in some cases additional time may be needed for schools to modify existing processes.

While schools are not required to review 2010-2011 award packages for students who were approved for only Direct Subsidized Loans, if such a student contacts the school and requests Direct Unsubsidized Loan funds that the student is otherwise eligible to borrow for a loan period in which the student is still enrolled at least half time, the school must originate the Direct Unsubsidized Loan, unless the school exercises its authority to refuse to originate a loan on a case-by-case basis, as discussed below.

Finally, we note that schools are not precluded from counseling students on the differences between subsidized loans and unsubsidized loans, and emphasizing that students should borrow Direct Unsubsidized Loans only if they have exhausted all non-loan options for financing their education.

Direct PLUS Loans

The Direct PLUS Loan Program provides loans to parents of dependent students and to graduate and professional students. A school may choose whether to participate in the Direct PLUS Loan Program. However, a school that chooses to participate in the Direct PLUS Loan Program and that has both undergraduate and graduate/professional students must make Direct PLUS Loans available to both the parents of its dependent undergraduate students and to its graduate/professional students. That is, such a school may not limit Direct PLUS Loan borrowing only to parents or only to graduate/professional students.

Note that dependent student borrowers at a school that does not participate in the Direct PLUS Loan Program are not eligible for the increased Direct Unsubsidized Loan amounts that are available to dependent students at schools that are participating in the Direct PLUS Loan Program and whose parents are unable to obtain a Direct PLUS Loan.

If a school that offers graduate and professional degree programs chooses to participate in the Direct PLUS Loan Program, it must also offer Direct Subsidized Loans and Direct Unsubsidized Loans, since a condition for originating a Direct PLUS Loan for a graduate/professional student is that the school must first determine the student's eligibility for those loans (see 34 CFR 685.200(b)(4)). Under the Direct Loan Program regulations at 34 CFR 685.301(a)(3) and 685.304(a)(2), if a graduate/professional student is eligible for a Direct Subsidized Loan and/or a Direct Unsubsidized Loan, but has not requested the maximum amount of those loans for which the student is eligible, the school must, prior to originating a Direct PLUS Loan for the student, notify the student of his or her maximum Direct Subsidized/Unsubsidized Loan eligibility. The school must also provide the student with information on the differences between the terms and conditions of a Direct PLUS Loan and the terms and conditions of a Direct Subsidized/Unsubsidized Loan.

Note, however, that a graduate/professional student may decline a Direct Subsidized and/or a Direct Unsubsidized Loan and may choose to borrow only a Direct PLUS Loan.

Limiting student or parent borrowing

In this section, we remind schools of the conditions under which they may refuse to originate a Direct Loan or may originate a loan for an amount less than the borrower's full eligibility.

Schools' authority to refuse to originate a loan or to reduce the amount of a loan on a case-by-case basis

Section 479A(c) of the Higher Education Act, as amended (HEA), and the Direct Loan Program regulations at 34 CFR 685.301(a)(8) give schools the authority to refuse to originate a Direct Loan or to reduce the amount of an individual borrower's eligibility for a Direct Loan. Any such determination must be made on a case-by-case

basis. The decision must be provided to the student or parent borrower in writing, and documentation supporting the determination must be retained in the student's file at the school.

Limitation on an across-the-board basis or by category of borrower

Schools do not have the authority to limit Direct Loan borrowing by students or parents on an across-the-board or categorical basis. For example, schools may not limit all student and parent Direct Loan borrowing to the amounts needed to cover only institutional costs, if the borrowers would otherwise be eligible to receive additional loan funds. Similarly, schools may not have policies that would result in certain categories of borrowers (e.g., first-year students, students who live at home, or students in certain majors) being denied access to Direct Loans, or that would reduce the amount of Direct Loan funds that borrowers in certain categories would otherwise be eligible to receive. In addition, schools may not have policies that allow students to receive Direct Loans only for certain enrollment periods (e.g., for regular terms, but not summer terms).

A school also may not have an across-the-board limit on student eligibility for Direct Subsidized Loans and Direct Unsubsidized Loans that restricts student borrowers to the "base" combined subsidized/unsubsidized annual loan limit (\$3,500, \$4,500, \$5,500 or \$8,500, depending on grade level), and not make available to the student the "additional" unsubsidized loan amounts (\$2,000 for dependent students; \$6,000, \$7,000 or \$12,000 for independent students, depending on grade level) for which the student would otherwise be eligible. For example, a school may not limit borrowing by first-year dependent students to \$3,500 in Direct Subsidized and/or Direct Unsubsidized Loans per academic year if the dependent students are eligible to receive additional Direct Unsubsidized Loan funds beyond the "base" subsidized/unsubsidized annual loan limit.

A school is not prohibited from counseling students on the benefits of avoiding loans or reducing the amount the student borrows. We also note that a student can initially choose to not take out a loan or to borrow an amount less than the full amount for which the student would be eligible, and later in the loan period request the loan or the additional loan funds.

Denial of Direct PLUS Loans based on adverse credit

In this section, we explain why some parents or graduate students who were previously denied Federal PLUS Loans by FFEL Program lenders may be approved for Direct PLUS Loans.

Under sections 428B and 455(a) of the HEA, a borrower is not eligible to receive a Direct PLUS loan if the borrower has an adverse credit history as determined in accordance with the Department's regulations. A credit check is conducted on each Direct PLUS Loan applicant to determine if the applicant meets this eligibility requirement. The Direct Loan regulations provide that an applicant who is determined to have an adverse credit history may receive a Direct PLUS Loan if the applicant obtains an endorser who does not have an adverse credit history, or documents to the satisfaction of the Secretary the existence of extenuating circumstances related to the adverse credit history.

A number of schools that are participating in the Direct Loan Program for the first time have noted that some Direct PLUS Loan applicants are being approved for Direct PLUS Loans even though in prior years FFEL Program lenders had declined to make FFEL PLUS Loans to these borrowers. The schools have noted that these borrowers appear to have the same credit issues or other financial circumstances that existed at the time the FFEL lenders declined to make FFEL PLUS Loans. In the case of parent PLUS applicants, the prior FFEL Program PLUS Loan denial allowed the dependent student to receive additional unsubsidized loan funds in the amounts normally available only to independent students. Schools have expressed concern that these students will no longer be eligible to receive additional unsubsidized loan funds because their parents have been approved to receive Direct PLUS Loans.

Under 34 CFR 685.200(c)(1)(vii)(B), a Direct PLUS Loan applicant is considered to have an adverse credit history if he or she:

- Is 90 or more days delinquent on any debt as of the date of the credit report; or
- Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under Title IV of the HEA during the five years preceding the date of the credit report.

This same definition of adverse credit history is in the FFEL Program regulations. However, the FFEL Program regulations also authorized lenders to establish stricter standards for determining whether an applicant for a FFEL PLUS Loan had an adverse credit history. In the Direct Loan Program, a Direct PLUS Loan applicant is denied only if he or she has an adverse credit history in accordance with the regulations. Because of this difference between the FFEL and Direct Loan programs, it is possible that some borrowers who had been denied FFEL PLUS Loans in the past are now being approved for Direct PLUS Loans.

Awarding additional Direct Unsubsidized Loan funds to dependent students

In this section we remind schools of their authority to award additional Direct Unsubsidized Loan funds to a dependent undergraduate student based on a determination that the student's parent is unable to borrow a Direct PLUS Loan due to having an adverse credit history (see the preceding section of this letter) or other exceptional circumstances.

The Direct Loan Program regulations at 34 CFR 685.203(c)(1)(ii) authorize a school to award additional Direct Unsubsidized Loan funds to a dependent student (up to the amounts normally available only to independent undergraduate students) if the financial aid administrator determines that the student's parent is unable to borrow a Direct PLUS Loan due to exceptional circumstances. The school must make this determination on a case-by-case basis, and must maintain documentation of the determination. In addition to circumstances in which the credit check shows that a parent has an adverse credit history, exceptional circumstances include, but are not limited to, circumstances in which:

- The parent is incarcerated;
- The parent's whereabouts are unknown;
- The parent is not a U.S. citizen or is unable to provide evidence that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;
- The student's parent receives only public assistance or disability benefits, and the school has documented that the parent would not be able to repay the PLUS Loan;
- The parent has filed for bankruptcy and has provided documentation from the bankruptcy court stating that as a condition of the bankruptcy filing, the parent may not incur any additional debt; or
- The school has examined the family financial information and documented the parent's likely inability to repay the PLUS Loan due to an existing debt burden or the parent's expected income-to-debt ratio.

If a school determines that a parent is unable to borrow a Direct PLUS Loan due to exceptional circumstances, the school may award additional Direct Unsubsidized Loan funds to the dependent student without requiring the parent to apply for a Direct PLUS Loan. A school may also make a determination that a parent is unable to borrow a Direct PLUS Loan due to exceptional circumstances in accordance with the guidance above (and award additional Direct Unsubsidized Loan funds to the student on that basis), even if the parent has already applied for a Direct PLUS Loan and been approved based on the results of the credit check. As explained earlier, the credit check only determines whether the applicant has an adverse credit history, as defined in the

Direct Loan Program regulations. This means, for example, that a parent whose income is limited to public assistance or disability benefits will be approved if the credit check does not show an adverse credit history.

When making a determination that a parent is unable to obtain a Direct PLUS Loan due to exceptional circumstances, it is important to keep in mind that the following do *not* constitute exceptional circumstances that would support awarding additional Direct Unsubsidized Loan funds to a dependent student:

- A parent's refusal to borrow a Direct PLUS Loan;
- A school's decision not to participate in the Direct PLUS Loan Program; or
- An aid administrator's "belief" that a parent should not borrow a Direct PLUS Loan (without any documentation of exceptional circumstances).

For additional guidance on awarding additional Direct Unsubsidized Loan funds to dependent students, see the discussion under "Criteria for Additional Unsubsidized Stafford" in Volume 3, Chapter 6 of the Federal Student Aid Handbook.

Student FAFSA required for parent Direct PLUS Loans

In this section, we remind schools that beginning with parent Direct PLUS Loans made for the 2011-2012 award year, the dependent student on whose behalf a parent has applied for a Direct PLUS Loan must have filed a Free Application for Federal Student Aid (FAFSA).

We previously notified schools of this new requirement in a [September 7, 2010, Electronic Announcement](#) posted on the Department's Information for Financial Aid Professionals (IFAP) Web site. We note that this requirement will not result in significant additional burden for either schools or students and their parents, since in recent years more than 98 percent of all parent PLUS Loan applications have been supported by a FAFSA from the dependent student.

This requirement will ensure that student eligibility data matches are conducted to verify that the dependent student on whose behalf the parent is borrowing:

- Is not in default on a Title IV loan and does not owe an overpayment on a Title IV grant;
- Has had his or her Social Security number verified by the Social Security Administration;
- Has had his or her citizenship status confirmed by either the Social Security Administration or the Department of Homeland Security; and
- If required, has registered with the Selective Service System.

Before originating a parent Direct PLUS Loan, schools must review the Institutional Student Information Record (ISIR) or Student Aid Report (SAR) of the dependent student to determine that there are no student eligibility issues that must be resolved before the parent can receive the Direct PLUS Loan.

Note that this requirement is for the *student* to submit a FAFSA. It is not a requirement for the parent to submit a FAFSA in the parent's name. In addition, this requirement does not preclude the "non-custodial parent," whose information is not included on the student's FAFSA, from obtaining a Direct PLUS Loan, though the student still must have filed a FAFSA.

In a future electronic announcement that will be posted on the IFAP Web site, we will provide information on upcoming changes to the Department's Common Origination and Disbursement (COD) System in connection with this new requirement.

In closing, we thank all schools for their cooperation in the administration of the Direct Loan Program and the other Title IV student assistance programs. Questions on any of the guidance provided in this letter should be directed to Pam Moran by e-mail at pamela.moran@ed.gov or by phone at (202) 502-7732.

Sincerely,

A handwritten signature in cursive script that reads "David A. Bergeron". The signature is written in black ink and has a long horizontal flourish extending to the right.

David A. Bergeron
Acting Deputy Assistant Secretary for
Policy, Planning and Innovation