

11 KAR 3:045. Permissible charges by lenders to borrowers.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 34 C.F.R. 682.202, 20 U.S.C. 1077a, 1078(B)(1)

STATUTORY AUTHORITY: KRS 13A.100(3), 164.746(6), 164.748(4), 34 C.F.R. 682.401(b)(10)(ii)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. Pub.L. 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. This administrative regulation is necessary to prescribe the charges that lenders may impose on borrowers, either directly or indirectly.

Section 1. Interest Rates on Subsidized Federal Stafford Loans. (1) The annual interest rate on the unpaid principal balance (including any capitalized interest added to principal) of a subsidized federal Stafford loan for a borrower who, on the date of signing the promissory note or other written evidence of that loan, does not owe an outstanding balance on a previous federal Stafford loan shall be:

(a) Seven (7) percent for a loan covering a period of instruction beginning before January 1, 1981;

(b) Nine (9) percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(c) Eight (8) percent for a loan covering a period of instruction beginning on or after September 13, 1983;

(d) For any loan to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1988:

1. Eight (8) percent during the period beginning on the date of the disbursement of the loan and ending four (4) years after the commencement of repayment; and

2. Ten (10) percent during the remainder of the repayment period;

(e) For any loan for which the first disbursement is made on or after October 1, 1992, during any twelve (12) month period beginning on July 1 and ending on June 30, be determined by the secretary on the preceding June 1 and be equal to the bond equivalent rate of ninety-one (91) day treasury bills, auctioned at the final auction held prior to such June 1, plus three and one-tenth (3.1) percent, except that the rate shall not exceed nine (9) percent. The secretary shall determine the rate of interest under this paragraph after consultation with the U.S. Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination;

(f) Eight (8) percent for any loan made, on or after October 1, 1992, to a borrower, who on the date of entering into the note or other written evidence of the loan, has an outstanding balance of principal or interest on any federal SLS loan, federal PLUS loan, or federal consolidation loan.

(2) The interest rate on a subsidized federal Stafford loan for a borrower who, on the date of signing the promissory note or other written evidence of that loan, has an outstanding balance on a previous federal Stafford loan, shall be the applicable interest rate on the previous loan.

(3) Treatment of excess interest payments on accounts resulting from decline in treasury bill rates;

(a) If, with respect to a loan for which the applicable interest rate is ten (10) percent under subsection (1)(d) of this section at the close of any calendar quarter, the sum of the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for that quarter and 3.25 percent is less than ten (10) percent, then an adjustment shall be made to a borrower's account by calculating excess interest in the amount computed under paragraph (b) of this subsection, and

crediting the excess interest to the reduction of principal to the extent provided for under paragraph (c) of this subsection;

(b) The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to ten (10) percent minus:

1. The sum of the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for the calendar quarter, plus 3.25 percent; multiplied by

2. The outstanding principal balance of the loan (not including unearned interest added to principal) at the end of the calendar quarter; divided by

3. Four (4).

(c) Annual adjustment of interest and borrower eligibility for credit. Any adjustment amount computed pursuant to paragraph (b) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than thirty (30) days in making a required payment on the loan. Any credit which is to be made to a borrower's account pursuant to this subsection shall be made effective commencing no later than thirty (30) days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on the loan, by reducing the number of payments that shall be made with respect to the loan, or by reducing the amount of the final payment of the loan.

(4)(a) If, with respect to a loan (other than a loan for which the interest rate is determined in accordance with subsection (1)(e) of this section) made on or after July 23, 1992 to a borrower, who on the date of entering into the note or other written evidence of the loan, has an outstanding balance of principal or interest on any other authority insured loan, the sum of the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for that quarter plus three and one-tenth (3.1) percent is less than the applicable interest rate, then an adjustment shall be made by calculating excess interest in the amount computed under paragraph (b) of this subsection; and

1. During any period in which a student is eligible to have interest subsidy payments paid on his or her behalf by the secretary, by crediting the excess interest to the amount due from the secretary; or

2. During any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (c) of this subsection.

(b) Amount of adjustment. The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to the applicable interest rate minus the sum of:

1. The average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for such calendar quarter, plus three and one-tenth (3.1) percent; multiplied by

2. The outstanding principal balance of the loan (not including unearned interest added to principal) at the end of such calendar quarter; divided by

3. Four (4).

(c) Annual adjustment of interest and borrower eligibility for credit. Any adjustment amount computed pursuant to paragraph (b) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than thirty (30) days in making a required payment on the loan. Any credit which is to be made to a borrower's account pursuant to this subsection shall be made effective commencing no

later than thirty (30) days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on the loan, by reducing the number of payments that shall be made with respect to the loan, or by reducing the amount of the final payment of the loan.

(5)(a) The participating lender shall not collect from a borrower any amount of interest that is payable to the lender by the secretary on behalf of the borrower as a subsidy under the federal Act.

(b) The participating lender shall not charge interest or receive interest subsidies for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed.

Section 2. (1) Interest Rates on Unsubsidized Federal Stafford Loans. The annual interest rate on the unpaid principal balance (including any capitalized interest added to principal) of an unsubsidized federal Stafford loan for a borrower shall be the variable rate determined under Section 1(1)(e) of this administrative regulation.

(2) Interest that accrues on loans under this section during periods in which payments of principal are deferred shall, if agreed upon by the borrower and the lender:

(a) Be paid monthly or quarterly; or

(b) Be added to the principal amount of the loan not more frequently than quarterly by the lender.

Section 3. Interest Rates for Federal Supplemental Loans for Students and Federal PLUS Loans. (1) In general. Except as provided in subsections (2), (3), (5) and (6) of this section, the applicable rate of interest on federal Supplemental Loans for Students and federal PLUS loans made on or after October 1, 1981, shall be fourteen (14) percent per year on the unpaid principal balance (including capitalized interest) of the loan.

(2) The applicable interest rate on a federal SLS loan made to cover a period of enrollment beginning on or after October 17, 1986 or a federal PLUS loan, if the federal SLS loan or federal PLUS is disbursed prior to July 1, 1987, shall be:

(a) Nine (9) percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(b) Fourteen (14) percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(c) Twelve (12) percent for a loan made on or after November 1, 1982.

(3) Reduction of rate after decline in treasury bill rates. If for any twelve (12) month period beginning on or after October 1, 1981, the secretary, after consultation with the U.S. Secretary of the Treasury, determines that the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for such twelve (12) month period is equal to or less than fourteen (14) percent, the applicable rate of interest for loans made on and after the first day of the first month beginning after the date of publication of the determination shall be twelve (12) percent per year on the unpaid principal balance of the loan.

(4) Increase of rate after increase in treasury bill rates. If for any twelve (12) month period beginning on or after the date of publication of a determination under subsection (2) of this section, the secretary, after consultation with the U.S. Secretary of the Treasury, determines that the average of the bond equivalent rates of ninety-one (91) day treasury bills auctioned for such twelve (12) month period exceeds fourteen (14) percent, the applicable rate of interest for loans made on and after the first day of the first month beginning after the date of publication of that determination under this subsection shall be fourteen (14) percent per year on the unpaid principal balance

of the loan.

(5) Availability of variable rates.

(a) Except as provided in paragraphs (c) or (d) of this subsection, for any loan disbursed on or after July 1, 1987, or any new loan made to refinance previous federal SLS loans or federal PLUS loans made prior to that date, the applicable rate of interest during any twelve (12) month period beginning on July 1 and ending on June 30 shall be determined under paragraph (b) of this section, except that the rate shall not exceed twelve (12) percent.

(b) For any twelve (12) month period beginning on July 1 and ending on June 30, the rate determined under this paragraph shall be determined by the secretary on the preceding June 1, after consultation with the U.S. Secretary of the Treasury, and published in the Federal Register as soon as practicable after the date of determination, and shall be equal to the bond equivalent rate of fifty-two (52) week treasury bills auctioned at the final auction held prior to such June 1, plus 3.25 percent.

(c) Notwithstanding paragraph (a) of this subsection, for any federal SLS loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate shall be determined for any twelve (12) month period beginning on July 1 and ending on June 30 by the secretary on the preceding June 1, after consultation with the U.S. Secretary of the Treasury, and published in the Federal Register as soon as practicable after the date of determination, and shall be equal to the bond equivalent rate of fifty-two (52) week treasury bills auctioned at the final auction held prior to such June 1, plus three and one-tenth (3.1) percent, and the interest rate shall not exceed eleven (11) percent.

(d) Notwithstanding paragraph (a) of this subsection, for any federal PLUS loan for which the first disbursement is made on or after October 1, 1992, the applicable interest rate shall be determined for any twelve (12) month period beginning on July 1 and ending on June 30 by the secretary on the preceding June 1, after consultation with the U.S. Secretary of the Treasury, and published in the Federal Register as soon as practicable after the date of determination, and shall be equal to the bond equivalent rate of fifty-two (52) week treasury bills auctioned at the final auction held prior to such June 1, plus three and one-tenth (3.1) percent, and the interest rate shall not exceed ten (10) percent.

(6) A holder may at any time combine multiple loans that it holds for a borrower under a single repayment schedule, which provides for a single principal payment and a single payment of interest, and interest shall accrue on the combined balance at the weighted average of the rates of all included loans.

(7) Interest that accrues on loans under this section during periods in which payments of principal are deferred shall, if agreed upon by the borrower and the lender:

(a) Be paid monthly or quarterly; or

(b) Be added to the principal amount of the loan not more frequently than quarterly by the lender.

Section 4. Interest on Federal Consolidation Loan. Federal Consolidation loans shall bear interest at an annual rate on the unpaid principal balance of the loan (including any capitalized interest) that is equal to the greater of the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent, or nine (9) percent.

Section 5. Capitalization. (1) A participating lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance in accordance with subsections (2) and (3) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest that has accrued:

(a) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note, or by written consent of the borrower;

(b) During a period of authorized deferment;

(c) During a period of forbearance, in which interest is forborne; or

(d) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under subsection (2)(a) through (c) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under subsection (2)(d) of this section only on the date repayment of principal actually begins.

(4) Capitalization on claim. Interest accrued and unpaid at the time of payment of an insurance claim by the authority due to the default or bankruptcy of the borrower shall be capitalized at the time of payment of the claim.

Section 6. Origination and Loan Processing Fees. (1) Origination fee for a subsidized federal Stafford loan.

(a) Except as provided in paragraph (d) of this subsection, under the subsidized Robert T. Stafford Federal Student Loan program, a participating lender shall charge a borrower an origination fee of five (5) percent of the principal amount of the loan, to be deducted proportionately from each installment disbursement of the proceeds of the loan prior to payment to the borrower.

(b) The origination fee authorized in paragraph (a) of this subsection shall not be taken into account for purposes of determining the amount of interest that may be charged pursuant to Section 1 of this administrative regulation.

(c) The lender shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof by a credit against the borrower's loan balance if:

1. The loan check is returned uncashed to the lender;

2. The loan is repaid in full within 120 days of disbursement;

3. The loan check has not been cashed within 120 days of disbursement; or

4. The loan proceeds disbursed by electronic funds transfer have not been released from the restricted account maintained by the participating institution within 120 days of disbursement.

(d) The origination fee authorized by paragraph (a) of this subsection shall be increased to five and five-tenths (5.5) percent for any loan made or disbursed during a period of sequestration pursuant to Pub.L. 99-177 (the "Balanced Budget and Deficit Control Act of 1985").

(2) Origination fee for an unsubsidized federal Stafford loan.

(a) The participating lender shall charge the borrower and pay to the secretary a combined origination fee and insurance premium in the amount of six and five-tenths (6.5) percent of the principal amount of the loan, to be deducted proportionately from each installment disbursement of the proceeds of the loan prior to payment to the borrower.

(b) The combined fee and premium shall not be taken into account for purposes of determining the amount of interest that may be charged pursuant to Section 2 of this administrative regulation.

(3) Origination fee for a federal SLS loan or a federal PLUS loan.

(a) On each federal SLS loan or federal PLUS loan made on or after October 1, 1992, the participating lender shall charge the borrower and pay to the secretary an origination fee of five (5) percent of the principal amount of the loan, to be deducted proportionately from each installment disbursement of the proceeds of the loan prior to payments to the borrower.

(b) The origination fee authorized in paragraph (a) of this subsection shall not be taken into account for purposes of determining the amount of interest that may be charged pursuant to Section 3 of this administrative regulation.

(4) Administrative charge for refinancing a federal SLS loan or a federal PLUS loan.

(a) A participating lender that makes a new loan to refinance previous federal SLS loans or

federal PLUS loans made prior to July 1, 1987 and held by that lender, may charge a borrower an amount not to exceed \$100 to cover the administrative costs of making the loan or, not more than one-half (1/2) of which shall be paid to the authority to cover the cost of reissuance.

(b) No administrative fee authorized in paragraph (a) of this subsection may be charged to a borrower by a participating lender that makes a loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 that are held by a holder other than that lender.

(5) Federal Consolidation Loan program. No administrative fee, charged by the authority to a participating lender to cover the costs of increased or extended liability with respect to insurance of a consolidation loan, may be charged to the borrower or otherwise deducted from the loan proceeds.

Section 7. Insurance Premium. The insurance premium is a charge made by the authority to the lender, incident to the guarantee the lender receives against default by the borrower.

(1)(a) If the insurance premium is provided for in a borrower's promissory note or other written evidence of a subsidized federal Stafford loan, a federal SLS loan, or a federal PLUS loan, including a new federal SLS loan or federal PLUS loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 that are held by a holder other than that lender, a participating lender may charge the borrower a single insurance premium actually paid by the lender to the authority equal to not more than three (3) percent of the principal amount of the loan, by deduction proportionately from each installment disbursement of the proceeds of the loan.

(b) Notwithstanding paragraph (a) of this subsection, no additional insurance fee may be charged to the borrower with respect to a new loan to refinance previous federal SLS loans or federal PLUS loans made prior to July 1, 1987 that are held by the lender of the new loan.

(2) Insurance premium for an unsubsidized federal Stafford loan. A participating lender may charge to a borrower the combined origination fee and insurance premium authorized by Section 6(2) of this administrative regulation.

(3) Federal consolidation loan. No insurance premium shall be charged to the borrower on any federal consolidation loan.

Section 8. Late Charges. (1) If authorized by the borrower's promissory note or other written evidence of the debt, the holder may require the borrower of any authority insured student loan to pay a late charge under the circumstances described in subsection (2) of this section. This charge shall not exceed six (6) cents for each dollar of each late installment payment.

(2) The holder may require the borrower to pay a late charge if the borrower:

(a) Fails to pay all or a portion of a required installment payment within ten (10) days after it is due; and

(b) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

Section 9. Collection Charges. (1) If provided for in the borrower's promissory note or other written evidence of the debt, the holder may require that the borrower pay costs incurred by the holder or its agent in collecting installments not paid when due, including, but not limited to, attorney's fees, court costs, telegrams, and long distance telephone calls.

(2) The costs referred to in subsection (1) of this section shall not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower, such as local telephone calls.

Section 10. Penalty for Prepayment. The borrower shall be entitled to accelerate without penalty repayment of the whole or any part of an authority insured student loan. (19 Ky.R. 1681; eff. 3-

4-1993; Crt eff. 9-28-2018.)