

2009 COMPETITIVE LOAN AUCTION PILOT PROGRAM FOR PLUS LOANS TO NEW PARENT BORROWERS QUESTIONS AND ANSWERS

The Department has received the following questions on the PLUS Auction under which eligible FFEL lenders will secure the exclusive rights to make PLUS loan to first-time parent PLUS borrowers.

(1) Are guaranty agencies eligible to submit an application to serve as a Lender-of-Last-Resort under the PLUS auction program?

Only an eligible FFEL program lender can participate in the PLUS auction or serve as a lender of last resort under the PLUS auction program. The PLUS auction LLR function is authorized under section 499 of the Higher Education Act (HEA) and is not the LLR process authorized under section 428(j) of the HEA. A guaranty agency may participate in the PLUS auction LLR process only if it meets the requirements to be an eligible lender under the HEA other than as an LLR and has a lender ID number.

(2) If a lender wins the right to make new parent PLUS loans in a State in which the lender already makes parent PLUS loans, will loans made to continuing parent borrowers beginning 7/1/2009, be considered made under the auction program and thus subject to reduced special allowance payments (SAP), 99% insurance and no lender origination fee?

PLUS loans made to continuing parent borrowers on or after July 1, 2009, in a State for which the lender won PLUS auction rights are not considered to be made under the PLUS auction program. Only PLUS loans made to new parent borrowers that are disbursed on or after July 1, 2009, for loan periods beginning on or after that date, are covered by the auction program.

(3) Under the auction program, may a new parent borrower use either of the two winning lenders for the parent's first PLUS loan? Does the parent continue to have this choice for the second and all subsequent PLUS loans made for the student? What if the student graduates from the school for attendance at which the parent borrowed? What if the student transfers to another school in the State without graduating? Do a lender's exclusive rights to the parent PLUS borrower continue after the next PLUS auction if the lender is not one of the two winning bidders of that auction?

A borrower may select either of the two winning lenders for the borrower's first PLUS loan. Once the borrower selects a lender, however, the borrower will be required to borrow from that lender until the student graduates, or the student is no longer attending a school in that State. The result of a later PLUS auction has no impact on the lender's exclusive right to make loans to the parent borrower.

(4) Are parent PLUS loans made under the auction program eligible for the Department's participation interest and "put" programs?

Yes, if the loans are otherwise eligible, they may be part of the Department's Participation Interest and Put programs for the 2009-10 year.

(5) The Federal Register provides an outline of the information a lender needs to submit to pre-qualify for the PLUS auction. Is there an actual application that must be used to submit the information, and if not, will any format be accepted?

A lender should submit the information following the format outlined on the Pre-Qualification Form located on the Website at:

<http://www.ed.gov/ope/plus-auction>

(6) The Federal Register notice stated that a winning lender may consolidate the PLUS loans made under the auction program at the request of the borrower. To fulfill its lending obligation, is a winning lender required to offer consolidation, or may the lender refer borrowers to another FFEL consolidation lender or to the Direct Consolidation Loan program?

A winning lender is not required to make FFEL consolidation loans but has the additional benefit under the program of the first right to make consolidation loans to its parent PLUS borrowers.

(7) Is the PLUS loan volume by State contained in the Excel spreadsheet that can be downloaded from the Department's website only parent PLUS borrower volume, or does it also include student PLUS borrowers? Does the volume represent all PLUS borrowers for those years or only new PLUS borrowers?

The loan volume includes only parent PLUS borrowers. The first table shows the volume of parent PLUS borrowers for the award years listed, the second table shows loan volume for first and second year parent PLUS borrowers.

(8) If there are no bidding lenders for a State and no lender applying to serve as the PLUS lender of last resort for that State, will parent PLUS loans to new borrowers be made under the current FFEL program structure with the current SAP rate of CP+1.79, 97% insurance rate, and 1% lender fee?

Yes, if the auction for a given State is unsuccessful, which means there are not two winning bidders, and there is also no lender that has agreed to serve as the PLUS auction LLR for the State, parent PLUS loans to new borrowers will be made under the current FFEL PLUS program.

(9) May a lender attach contingencies to its participation in the PLUS auction? For example, may a lender require satisfactory product profitability over the life of the auction period?

No, a winning lender cannot attach any contingencies to its participation in the auction program.

(10) Must a lender who wins the auction rights for a given State accept applications from all continuing parent PLUS borrowers whose loans were originated before July 1, 2009, and who have dependents attending school in the State, or may the lender choose to make PLUS loans only to its own serial borrowers?

Winning lenders are only required to accept applications from all new PLUS parent borrowers whose students are attending schools in the State and who qualify for a PLUS loan that will be first disbursed on or after July 1, 2009 for a loan period that begins on or after that date. A winning lender may maintain its usual lending policies for all other PLUS applicants.

(11) Where are online schools considered to be located for purposes of the PLUS auction? If a school has several brick and mortar locations nationally, or has both a brick and mortar location and an online component, in which State(s) is the school located?

If the school is strictly an online school, the school is located in the state in which the school maintains its primary administrative offices. Each brick and mortar location of a school is considered to be in the State in which it is physically located. The online component of a school that also has one or more physical locations is considered to be located in the State in which the school's main campus is located.

(12) For a dependent student to be eligible for additional unsubsidized Stafford Loan funds as a result of a new parent PLUS applicant's denial, must the denial come from one of the lenders that has PLUS auction rights in the State?

Yes, the denial must be from one of those two lenders.

(13) The Federal Register Notice on the PLUS auction states that the Secretary will accept the two lowest bids for each State but that the actual SAP rate for the winning bidders will be set to the second lowest bid. What would the SAP rate be in the following circumstances:

Bank A bids 1.59
Bank B bids 1.50
Bank C bids 0.50

Under Section 499(b)(3)(E) of the HEA, the maximum bid allowable under the PLUS Auction Program is 1.79 which, when added to the reference CP rate, results in the lender's yield. In this example, the SAP rate for both winning lenders will be set to the second lowest bid -- 1.50. This rate, when added to the reference CP rate, is the lender's yield on the loans made under the auction.

(14) What will happen if there are more than two lenders providing the same lowest SAP bid?

The Department will review the prequalification materials from all bidders and the Secretary will determine the winning lenders based on that review.

(15) When determining if a PLUS borrower is a "new" borrower, do lenders need to take into consideration the dependent student for whom the parent is borrowing? For example, if a lender currently has loans for a PLUS borrower with dependent student "A" and that same PLUS borrower applies for a PLUS loan after July 1 for dependent student "B", given that the borrower himself is not a "new" borrower, would the new loan fall under the PLUS Auction program or under the PLUS program as it exists today?

Only a new parent borrower in the PLUS program would be a borrower under the PLUS auction program. A new borrower is not one who, prior to July 1, 2009, borrowed a parent PLUS loan for any dependent student. The borrower in this example would not be considered a new borrower and would continue to borrow under the current PLUS program.

(16) Is payment by a guaranty agency of the federal default fee on behalf of its borrowers considered a prohibited borrower benefit under the PLUS auction program?

No. The HEA does not prohibit a guaranty agency from paying the federal default fee.

(17) Will lenders that win an auction be given a separate lender code for loans made under the auction? These loans are not subject to the 1 percent lender fee and are insured at 99 percent. The lender will probably continue to make PLUS loans to continuing parent borrowers outside of the auction.

Yes, the Department plans to provide a separate lender code for winning lenders in each State.

(18) It may be difficult to determine whether a parent previously borrowed for a particular student from a different lender at the time of application. As a result, the following scenario could occur -- an application comes in to a non-winning lender for a loan period beginning on/after July 1, 2009. The loan is certified by the school (and guaranteed).

The lender then makes the loan. If it turns out that the parent is borrowing for a new student for the first time -- the loan would have been made in error. What is the implication if such a loan is made? May a lender rely on a school's certification of the loan that the borrower was entitled to borrow from any lender as opposed to an auction winner?

Yes, the lender may rely on the school's certification as long as the lender does not have any conflicting information.

(19) The Federal Register Notice indicates that lenders wishing to act as PLUS auction LLR in a State must submit the *PLUS Lender of Last Resort Application* form by April 1st, in addition to the Pre-Qualification Form. If a lender has already been designated as FFELP LLR for my State, does it still need to submit the referenced LLR application form? If so, please provide direction on where to locate the form?

Yes, even if a lender has been designated as LLR in the State by the guaranty agency, a lender that wishes to serve as a PLUS auction LLR must submit the material referenced in the Federal Register Notice. Lenders will need to answer the questions outlined on the Pre-Qualification Form (located on the website) and submit that information to the Department by April 1, 2009. The lender will need to submit a letter, which may be submitted electronically, indicating the State(s) for which it is interested in serving as the PLUS auction LLR. This letter must be submitted no later than 14-days prior to the Auction date, which is scheduled for April 15, 2009. If there are no successful bidders in the State(s) that a lender wants to serve as the PLUS LLR, the letter binds the lender to serve as the PLUS LLR for the period covered under the Auction.

(20) On the Pre-Qualification Form, question #5 *Capital to Make PLUS Loans*, is there anything specific needed, other than financial statements, to document that a lender's net income is more than adequate to meet the State's PLUS loan demand?

A lender will need to submit adequate documentation to demonstrate that it has the ability to raise the capital necessary to make parent PLUS loans for the period covered by the auction. For example, a lender could submit an agreement with an investor to make adequate funds available, or information about the availability of funding from a bond issue. Alternatively, a business plan illustrating how a lender plans to raise capital for the periods covered under the auction could be used to demonstrate the lender's financial ability for this purpose.

(21) On page 9232 of the Federal Register, first column, first paragraph of the summary (and on page 9232, third column, first paragraph) it states that the initial auction covers "loan periods beginning on or after July 1, 2009 and ending on June 30, 2011." This is a different standard than the one articulated in the statute, which speaks to PLUS loans made on or after July 1, 2009. Generally, in implementing "new borrower" criteria, the standard used by the Department has always been "loans first disbursed on or after a certain date" as opposed to loan periods. It is much clearer and cleaner. As one example, there can be much confusion over whether a loan disbursed during the summer is a "tailer" or a "header" (i.e., whether it applies to a loan period that ends before July 1 or begins after July 1). We would urge the Department to use the standard of "parent PLUS loans made under section 428B, the first disbursement of which is on or after July 1, 2009 and before July 1, 2011."

Loans to new parent PLUS borrowers first disbursed on or after July 1, 2009, for loan periods beginning on or after July 1, 2009, would be included in the parent PLUS Auction. This standard will ensure continued school processing of PLUS loans for periods of enrollment that begin prior to July 1, but include that date.

(22) Must a successful bidding lender under the Auction use the minimum Federal credit criteria in determining borrower eligibility, or is the lender permitted to apply its own credit criteria as it does today under the PLUS program? Similarly, is the lender required to apply the extenuating circumstances as provided for under section 428B(a)(3)(B) of the HEA? Under the current PLUS program, a lender is permitted, but is not required to consider extenuating circumstances in determining whether to make a PLUS loan to an applicant who is otherwise ineligible due to adverse credit.

The minimum PLUS eligibility criteria in 34CFR 682.201(c) of the FFEL program regulations under which an applicant is ineligible only if the borrower has adverse credit must be used. Lenders must also apply the extenuating circumstances rules provided in 34CFR682.201(c)(2) and section 428B(a)(3)(B) of the HEA in determining borrower eligibility. While consideration of extenuating circumstances is permitted for other PLUS loans, it is required under the parent PLUS auction.

(23) Please provide additional detail concerning the access to capital standard? For what time period must a lender be able to show access to capital?

A lender is required to show the ability to provide parent PLUS loans to borrowers until the students graduate or no longer attend a school within that State. Winning lenders will have to show access to capital for the next two years and into the future. A lender may

indicate that it will rely upon the ECASLA programs to raise sufficient capital for the 2009-10 year, but may not do so beyond that time period.

(24) What will the Department do in the event of a failed auction in one or more States, or if there is only one bidder in a State? Does the auction default to the PLUS-LLR (since there were not two bidders) or is the lender that bid considered the winner for all eligible PLUS loans for a state?

If the Department does not receive two winning bids in a state, parent PLUS loans in that State will be made by the PLUS-LLR. If no parent PLUS-LLR can be determined, the program reverts to the normal PLUS program under which loans are made first by an eligible lender in the FFEL program as a PLUS Loan. If no lenders are able to make parent PLUS Loans under the regular program, then lenders may make regular FFEL-LLR loans with 100 percent insurance. If there are no lenders able to make PLUS loans under these terms, the guarantee agencies' LLR plans will take effect with the GA's making loans without or with Federal capital.

(25) May a lender submit a bid as a lender in a particular State and also apply to be a PLUS LLR for that state?

Yes, a lender may do so.

(26) If a lender submits its application for a PLUS Lender of Last Resort, does it represent a binding commitment to enter into an Agreement even though the SAP rate has not yet been determined by the Secretary, or can the lender decline to serve as the PLUS LLR if it views the SAP rate to be unacceptable?

An eligible lender must first submit the pre-qualification material when it submits an application to serve as the PLUS Auction LLR for a State. The lender will then be obligated to serve in that capacity if there are not two winning bidders in the State. A PLUS-LLR lender may not decline to serve later.

(27) What is the insurance rate for PLUS-LLR loans? Section 499 seems to say that all PLUS auction loans are paid at 99% insurance. The change in section 499 that directs you back to 428(b)(1)(G) states that loans are paid at 100% for LLR loans made under 428(j) (Guarantor LLR provisions). Since these loans are made under the PLUS Auction provisions in section 499, are they subject to 99% insurance or 100% insurance? Please clarify.

The insurance rate will be 99% for all loans made under the PLUS Auction program – both regular PLUS auction loans and PLUS LLR loans.

(28) Is a PLUS-LLR lender subject to the same penalties as a lender that bids and wins a bid (e.g., sanction, etc.)? Section 499 seems to loop the PLUS-LLR back into the same pre-qualification and agreement requirements as a bidding lender, but it is unclear what sanctions will apply if a lender selected as PLUS LLR cannot fulfill the commitment.

A PLUS-LLR that fails to fulfill its commitment would be subject to the same penalties as a winning bidder that failed to meet its commitment?

(19) On page 9234 of the Federal Register Notice, first column, first paragraph, it states that the PLUS-LLR commitment lasts past the two-year auction window (“until the dependent student graduates or is no longer attending an institution in that State”). Is a PLUS-LLR making a greater financial commitment or at least a commitment for a longer term (up to five years) than a lender making a standard auction bid? Please clarify whether the standard for making PLUS-LLR loans is different than the standard for a lender making an auction bid.

The PLUS-LLR commitment is the same as a winning bidder’s commitment. PLUS-LLRs must commit to continuing to make parent PLUS loans until the student graduates from the school or is no longer attending a school in that state.

(30) Please clarify what is meant by following statements:

"The lender should provide any relevant information to assist the Department in determining its capacity to originate loans timely and efficiently in the State(s) for which it intends to bid, including the technological compatibility with the institutions in the State(s) and, the State-designated or other guaranty agency with which the lender may not have previously participated." [under Origination of PLUS Loans]

Does "technological compatibility" just mean that the lender/originator uses an open School Based Software (SBS) product such as ELMNet? Or that the lender supports the SBS/processing flow that is most commonly used in that State? Where can a lender find information to better understand a specific State's technological preferences? If the lender identifies its origination process in the prequalification/bidding process and that process is a critical component to its cost factors, can the winning lender insist that schools conform to that processing flow?

"All eligible Federal PLUS Program loans originated under the Auction Program will be insured by a guaranty agency with which the lender currently has an agreement against losses." [under Additional Auction Program Information]

So, in practicality what does this mean? Would a lender that wants to bid in a given State only be considered if it currently has a guarantee agreement with the designated guarantor for that state? Or, would it only be considered if it were willing to start participating with the State-designated guarantor? What if the majority of the state's parent PLUS loan volume currently does not flow through the state-designated guarantor? Does that mean the lender does not need to address compatibility with the designated guarantor and instead needs to demonstrate an ability to satisfy the most common guarantor in that State?

Winning bidders under the PLUS Auction will be announced just prior to the peak period of student loan processing by schools for the upcoming academic year. The Department believes that parent PLUS loans made under the Auction program should be made as efficiently and timely as PLUS loans made under the regular PLUS program. A winning bidder cannot require schools to conform to its processing flow if that requirement will involve additional costs to schools or will delay borrowers’ receipt of parent PLUS loans. A lender planning to bid for the rights to make parent PLUS loans in a State in which it has not previously made loans, working with schools that have not participated previously with the lender, must have a plan for addressing the technical aspects of making loans in that State. The lender should be prepared to support the processing

flow most commonly used in that State if that will ensure efficient, uninterrupted processing of PLUS loans.

All PLUS loans made under the Auction will be guaranteed, but are not required to be guaranteed by the State-designated guaranty agency. A lender should examine the role the State-designated guarantor plays in loan processing flow for schools in the state and be prepared to address how the lender would deal with any issues related to that guaranty agency's role in making PLUS auction loans.

31) If a servicer originates and services loans on behalf of an eligible lender, who submits the bid?

An eligible lender must submit the bid. In some instances, the lender may wish to work with its servicer as they have done under the participation and put agreements, but the bid must be from the lender.

(33) Can a PLUS auction loan be sold to a non-auction lender? Will SAP rate and 99% insurance go with the loan?

Yes, a winning lender may sell loans originated under the PLUS auction to another eligible lender. The loan can also be sold through to the Department under the loan purchase program. However, if the loan is sold to another lender, instead of to the Department, the terms and conditions for the loan, including the SAP and insurance rate would remain the same as when the loan was originated by the winning PLUS Auction lenders.

(34) May schools continue to use PLUS loan preapprovals (or more specifically, denials) to make students eligible for the increased Unsubsidized Stafford loan limits for 2009-10. Specifically, does the denial have to come from one of the two lenders that win the parent PLUS loan rights for that state.

The denial should come from one of the identified winning lenders from the PLUS Auction for the associated State.