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Part IV

Department of Education

**34 CFR Part 674
Federal Perkins Loan Program; Final Rule**

DEPARTMENT OF EDUCATION**34 CFR Part 674**

RIN 1845-AA15

Federal Perkins Loan Program**AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan (Perkins Loan) Program regulations. These final regulations are intended to improve collections in the Perkins Loan Program by providing greater flexibility in the process of assigning defaulted Perkins loans to the Secretary for collection. They are intended to address the large number of Perkins loan accounts that have been in default status for more than five years.

These regulations also allow State institutions participating in the Perkins Loan Program to invoke their right to sovereign immunity in bankruptcy proceedings and clarify the maximum collection costs that may be assessed to a borrower who defaults again on a previously rehabilitated defaulted loan.

DATES: These regulations are effective July 1, 2001.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On July 27, 2000, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Perkins Loan Program in the **Federal Register** (65 FR 46127). In the preamble to the NPRM, the Secretary discussed on pages 46128-46130 the major proposed changes to the regulations.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary

obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations.

These regulations were published in proposed form on July 27, 2000, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 11, 2000 and 10 comments were received. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make.

Section 674.49 Bankruptcy of the Borrower

Comment: All of the commenters expressed support for the proposed regulations and specifically applauded the proposal that will allow a public institution determined to be an agency of a State to invoke its right of sovereign immunity under the eleventh amendment to the Constitution of the United States.

Discussion: We thank the commenters for their support.

Changes: None.

Section 674.39 Loan Rehabilitation

Comment: All of the commenters expressed support for the technical provision that reflects the Secretary's interpretation that the 24 percent cap on collection costs that may be charged a borrower on a rehabilitated defaulted loan no longer applies if the borrower defaults again on that loan.

Discussion: We thank the commenters for their support.

Changes: None.

Sections 674.13 and 674.50 Reimbursement to the Fund and Assignment of Defaulted Loans to the United States

Comment: One commenter recommended that we actively seek input from institutions participating in the Federal Perkins Loan Program to ensure the success of voluntary assignment of Perkins loans to the Department. The commenter believes that if the process is developed in a vacuum without the advice and input of Perkins Loan Program participants, the

program will have a very high probability of failure. The commenter also recommended that, in the event the new process is not successful, the Secretary determine the reasons for the lack of success before proposing new requirements, specifically any form of mandatory assignment.

Discussion: We appreciate the commenter's concern and are committed to developing a simplified voluntary assignment process for aging accounts. We will work with interested institutions and organizations to develop a less administratively burdensome process that institutions will readily use. However, should the voluntary process prove unsuccessful, we believe that to preserve program integrity and support, the Secretary must consider all other possible alternatives, including mandatory assignment of these aging accounts. In that event, any proposed changes would be subject to the negotiated rulemaking process, which provides for active participation by the student financial aid community.

Changes: None.

Comment: One commenter expressed the view that loan assignments by schools reduce funds available for future students. The commenter believes that it is not in the best interest of an institution to assign loans to the Department since funds collected by the Department are not returned to the Perkins Loan Program.

Discussion: We have researched the issue of whether collections received by us on assigned Federal Perkins Loans can remain in the program. We have determined that these funds may be redistributed within the Perkins Loan Program, although not specifically to the school that assigned the loan, and we are committed to doing so.

Changes: None.

Comment: One commenter suggested a list of documents that should be required when a loan is assigned to us for collection.

Discussion: We appreciate the commenter's suggestions. However, the change in section 674.50(c) of the regulations, which lists all possible documentation that may be required for assignment, is intended to improve Perkins loan collections by providing greater flexibility in the process of assigning certain defaulted Perkins Loans to us. We plan to work closely with the student aid community to develop the procedural guidelines for assignment, including identifying the minimum required documentation necessary for us to collect effectively on the assigned loans. We believe that separately codifying the required

documentation for certain categories of assignments undermines the flexibility achieved through this regulatory change.

Changes: None.

Comment: One commenter recommended that we establish a referral process on aged Perkins accounts. The commenter stated that a referral process would increase the collection tools available to institutions while preserving institutional control of the accounts.

Discussion: Our experience with an earlier Perkins Loan referral program was that the program was difficult to administer for both schools and the Department. More importantly, we have collection tools that are not available to schools, such as administrative wage garnishment, federal offset, and litigation by the Department of Justice that cannot be used if we do not hold legal title to the loan. We believe that under certain circumstances, such as an institution's inability to collect on a portion of its default portfolio for a lengthy period of time, maintaining program integrity and returning dollars generally to the Perkins Loan program outweighs preserving institutional control of these accounts.

Changes: None.

Comment: One commenter expressed the view that we should recognize the fact that accounts that are more than five years in default are still collectible. The commenter believes that schools that have loans in default over five years would have already obtained judgments that enable the schools to enforce wage garnishments. The commenter stated that borrowers must often satisfy such judgments before buying and selling real estate and are therefore highly motivated to pay the loan in full.

Discussion: We understand that some schools may have undertaken judicial wage garnishment to collect some of these aging, defaulted accounts. Clearly, if payments related to judicial wage garnishment are being received, the account would be an unlikely candidate for voluntary assignment. However, we believe that administrative wage garnishment, which only the Secretary can undertake on Federal Perkins loans, is a far more efficient and cost-effective collection tool than across-the-board litigation on aging, non-paying accounts. Such litigation poses significant costs to the school's fund and reduces dollars available for future students. Further, we believe that some schools may have exhausted all available collection efforts on some unknown number of these accounts and that we should have the opportunity to make use of our collection advantages to

return money to the Perkins Loan Program.

Changes: None.

Comment: One commenter feels that we should eliminate the provision that requires institutions to reimburse the Fund for all loans not accepted for assignment.

Discussion: The proposed change in § 674.13 modifies this provision of the regulations to allow us discretion in deciding when to require a school to reimburse its Perkins Fund. We believe that there will still be circumstances under which reimbursement of a school's fund would be appropriate, such as when the actions of a school render a loan legally unenforceable. Therefore, we decline to eliminate all possibility of reimbursement associated with assignment.

Changes: None.

Section 674.49 Bankruptcy of Borrower

Comment: One commenter noted that the proposed regulation that eliminates the requirement that an institution file a proof of claim if it wishes to invoke its right of sovereign immunity appeared to apply only to Chapter 7 bankruptcy filings.

Discussion: We would like to clarify that although the preamble to the proposed regulation only referenced Chapter 7 bankruptcy proceedings as it relates to claims of sovereign immunity, the proposed regulatory language itself also eliminated the proof of claim filing requirement for Chapter 13 bankruptcy proceedings.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain any burdens associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits would justify the costs.

We have also determined that these final regulations do not unduly interfere

with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM (65 FR 46129). We include additional discussion of potential costs and benefits in the section of this preamble titled Analysis of Comments and Changes.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulation would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: October 24, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 674 of title 34 of the Code of Federal Regulations 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–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.13 is amended by revising the introductory text in paragraph (a) and adding an OMB control number following the section to read as follows:

§ 674.13 Reimbursement to the Fund.

(a) The Secretary may require an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

3. Section 674.39 is amended by revising paragraph (c) and revising the OMB control number following the section to read as follows:

§ 674.39 Loan rehabilitation.

* * * * *

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment;

(2) That exceed the amounts specified in paragraph (c)(1) of this section, may be charged to an institution’s Fund until July 1, 2002 in accordance with § 674.47(e)(5); and

(3) Are not restricted to 24 percent in the event the borrower defaults on the rehabilitated loan.

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(Approved by the Office of Management and Budget under control number 1845–0023)

4. Section 674.49 is amended by revising paragraph (b) and revising the OMB control number following the section to read as follows:

§ 674.49 Bankruptcy of borrower.

* * * * *

(b) *Proof of claim.* The institution must file a proof of claim in the bankruptcy proceeding unless—

(1) In the case of a proceeding under chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets, or

(2) In the case of a bankruptcy proceeding under either Chapter 7 or Chapter 13 of the Bankruptcy Code in which the repayment plan proposes that the borrower repay less than the full amount owed on the loan, the institution has an authoritative determination by an appropriate State official that in the opinion of the State official, the institution is an agency of the State and is, on that basis, under applicable State law, immune from suit.

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(Approved by the Office of Management and Budget under control number 1845–0023)

5. Section 674.50 is amended by revising paragraph (c) introductory text and by revising the OMB control number following the section to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(c) The Secretary may require an institution to submit the following documents for any loan it proposes to assign—

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(Approved by the Office of Management and Budget under control number 1845–0019)

[FR Doc. 00–27739 Filed 10–31–00; 8:45 am]

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