

**Proposed Regulatory Language
Loans Committee**

Origin: ED and Non-Federal Negotiators

Issue: FFEL/DL Identity Theft Discharge

Regulatory Cite: §§682.208, 682.211, 682.402, and
682.411

Summary of Change: Regulations published in August and November of 2006 implemented changes made to the section 437(c) of the HEA by the HERA to authorize a discharge of a FFEL or Direct Loan Program loan if the borrower's eligibility to borrow was falsely certified because the borrower was a victim of the crime of identity theft. The regulations base the discharge of a FFEL or Direct Loan on the determination by a Federal, State or local court that the "crime" of identity theft had occurred. After careful consideration, the Department decided against making changes to the regulations as published but agreed with non-Federal negotiators that lenders should receive relief of certain due diligence requirements on a loan when identity theft is suspected.

We are proposing changes to allow lenders to temporarily waive credit bureau reporting requirements and suspend collection requirements for 90 days, and to place the borrower in an administrative forbearance for a period of up to twelve months while the lender investigates an alleged incident of identity theft.

Tentative Agreement: No

Change:

§682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) (1) An eligible lender of a FFEL loan shall report to at least one national credit bureau—

(i) The total amount of FFEL loans the lender has made to the borrower, within 90 days of each disbursement;

(ii) The outstanding balance of the loans;

(iii) Information concerning the repayment status of the loan, no less frequently than every 90 days or quarterly after a change in that status from current to delinquent;

(iv) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(v) Other information required by law to be reported.

(2) An eligible lender that has acquired a FFEL loan shall report to at least one national credit bureau the information required by paragraph (b)(1)(ii)-(v) of this section within 90 days of its acquisition of the loan.

(3) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 USC 1681a) or notification from a credit bureau that information furnished is a result of an alleged identity theft as defined in §682.402(e)(14), an eligible lender shall suspend credit bureau reporting for a period not to exceed 90 days while the lender conclusively determines the enforceability of a loan.

(i) If the lender determines that a loan does not qualify for a discharge under §682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must-
(A) Notify the credit bureau of its determination; and
(B) Comply with the §682.411(o)(3).

§682.211 Forbearance.

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(f) A lender may grant forbearance, upon notice to the borrower or if applicable, the endorser, with respect to payments of interest and principal that are overdue or would be due-

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify;

Pre-decisional DRAFT for discussion on April 18-20, 2007

April 12, 2007

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(2) Upon the beginning of an authorized deferment period under Sec. 682.210, or an administrative forbearance period as specified under paragraph (f)(11) or (i)(2) of this section;

(3) For the period beginning when the borrower entered repayment without the lender's knowledge until the first payment due date was established;

(4) For the period prior to the borrower's filing of a bankruptcy petition as provided in Sec. 682.402(f);

(5) For the periods described in Sec. 682.402(c) in regard to the borrower's total and permanent disability;

(6) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 USC 1681a) or notification from a credit bureau that information furnished is a result of an alleged identity theft as defined in §682.402(e)(14), for a period not to exceed 90 days necessary for the lender to conclusively determine the enforceability of a loan. If the lender determines that the loan does not qualify for discharge under §682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must comply with §682.411(o)(3).

~~(67)~~ For a period not to exceed an additional 60 days after the lender has suspended collection activity for the initial 60-day period required pursuant to Sec. 682.211(i)(6) and Sec. 682.402(b)(3), when the lender receives reliable information that the borrower (or student in the case of a PLUS loan) has died;

~~(78)~~ For periods necessary for the Secretary or guaranty agency to determine the borrower's eligibility for discharge of the loan because of an unpaid refund, attendance at a closed school or false certification of loan eligibility, pursuant to Sec. 682.402(d) or (e), or the borrower's or, if applicable, endorser's bankruptcy, pursuant to Sec. 682.402(f);

~~(89)~~ For a period of delinquency at the time a loan is sold or transferred, if the borrower or endorser is less than 60 days delinquent on the loan at the time of sale or transfer;

(~~910~~) For a period of delinquency that may remain after a borrower ends a period of deferment or mandatory forbearance until the next due date, which can be no later than 60 days after the period ends;

(~~1011~~) For a period not to exceed 60 days necessary for the lender to collect and process documentation supporting the borrower's request for a deferment, forbearance, change in repayment plan, or consolidation loan. Interest that accrues during this period is not capitalized; or

(~~1112~~) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

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(e) False certification by a school of a student's eligibility to borrow and unauthorized disbursements--

(1) General. (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. For purposes of a false certification discharge, the term ``borrower'' includes all endorsers on a loan. A student's eligibility to borrow shall be considered to have been falsely certified by the school if the school--

(A) Certified the student's eligibility for a FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or

(B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.

(ii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(2) Relief available pursuant to discharge. (i) Discharge under paragraph (e)(1)(i) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was, otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse or inaccurate credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(ii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

§682.411 Lender due diligence in collecting guaranty agency loans.

(o) Preemption. The provisions of this section-

(1) Preempt any State law, including State statutes, regulations or rules that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section; and

(2) Do not preempt provisions of the Fair Credit Reporting Act that provide relief to a borrower while the lender determines the legal enforceability of a loan when the lender receives a valid identity theft report or notification from a credit bureau that information furnished is a result of an alleged identity theft as defined in paragraph §682.402(e)(14).

(3) If the lender determines that a loan does not qualify for a discharge under §682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must-

(A) Cease any claim for special allowance payments in accordance with §682.302(d)(iv); and

(B) Cease any claim for interest payments in accordance with §682.300(b)(2)(vii).

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: FFEL/DL - Entrance Counseling for Graduate/Professional PLUS Borrowers

Regulatory Cite: §§682.603, 682.604(f), 682.604(g), 685.301, 685.304(a), and 685.304(b)

Summary of Change: Require institutions, as part of the process for certifying a loan (in the FFEL program) or originating a loan (in the Direct Loan program), to notify Graduate/Professional PLUS Loan student borrowers who are eligible for Stafford Loans of their eligibility for a Stafford Loan and of the terms and conditions of a Stafford Loan that are more beneficial to a borrower than the terms and conditions of a PLUS Loan, and to give borrowers an opportunity to request a Stafford Loan at that time. Also establishes separate entrance counseling requirements for Graduate/Professional PLUS student borrowers and Stafford Loan borrowers.

Tentative Agreement: Yes

Change:

§682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made ~~on the application~~ by the borrower and, in the case of a parent borrower of a PLUS loan, the student and the parent borrower.

(b) The information to be provided by the school about the borrower ~~making application for the loan~~ pertains to-

(1) The borrower's eligibility for a loan, as determined in accordance with §682.201 and §682.204;

(2) For a subsidized Stafford loan, the student's eligibility for interest benefits as determined in accordance with §682.301; and

(3) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in §682.604(c).

(c) Except as provided in paragraph (e) of this section, in certifying a loan, a school must certify a loan for the lesser of the borrower's request or the loan limits determined under §682.204.

(d) Before certifying a PLUS loan application for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Stafford loan. If the borrower is eligible for a Stafford loan but has not requested the maximum Stafford loan amount for which the borrower is eligible, the school must--

(1) Notify the graduate or professional student borrower of his or her eligibility for a the maximum Stafford loan amount that he or she is eligible to receive and --The notification must provide the borrower with a comparison of--

(i) The maximum interest rate for a Stafford loan and the maximum interest rate for a PLUS loan;

(ii) Periods when interest accrues on a Stafford loan and periods when interest accrues on a PLUS loan; and

(iii) The point at which a Stafford loan enters repayment and the point at which a PLUS loan enters repayment.

(2) Give the graduate or professional student borrower the opportunity to request the maximum Stafford loan amount for which the borrower is eligible.

(ed) A school may not certify a Stafford or PLUS loan, application, or a combination of loans applications, for a loan amount that--

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in §682.204; or

(2) Exceeds the student's estimated cost of attendance, less--

(i) The student's estimated financial assistance for that period; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

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\$ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

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(f) *Initial counseling.* (1) A school must ensure that initial counseling is conducted with each Stafford loan borrower ~~either in person, by audiovisual presentation, or by interactive electronic means~~ prior to its release of the first disbursement unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. ~~A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials, prior to releasing those loan proceeds~~

(2) A school must ensure that initial counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan. The initial counseling must--

(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;

(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct subsidized or unsubsidized loan provide the information specified in paragraphs (d) (1) (i) through (d) (1) (iii); and

(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct subsidized or unsubsidized loan provide the information specified in paragraph (f) (5) (i) through (f) (5) (iv) of this section.

(3) Initial counseling must be conducted either in person, by audiovisual presentation, or by interactive electronic means.

(4)A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials, prior to releasing those loan proceeds.

(52) ~~The~~ initial counseling for Stafford Loan borrowers must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;

(iv) In the case of a student borrower ~~of a Stafford loan~~ (other than a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school; and

(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school.

(~~63~~) If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(74) A school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(g) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) The exit counseling must--

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student

borrowers who have obtained Stafford loans—~~or SLS or~~ student borrowers who have obtained Stafford and PLUS loans, depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

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§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) *Determining eligibility and loan amount.* (1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. A school shall originate a Direct Loan while the student meets the borrower eligibility requirements of §685.200. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made ~~in the application~~ by the borrower and, in the case of a parent PLUS loan borrower, the student and the parent borrower.

(2) A school shall provide to the Secretary borrower information that includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with §685.200 and §685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) Before originating a Direct PLUS Loan for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Direct Subsidized and a Direct Unsubsidized Loan. If the borrower is eligible for a Direct Subsidized or Direct Unsubsidized Loan but has not requested the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible, the school must--

(i) Notify the graduate or professional student borrower of his or her eligibility for a the maximum Direct Subsidized or Direct Unsubsidized Loan amount that he or she is eligible to receive and .—The notification must provide the borrower with a comparison of--

(A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan, and periods when interest accrues on a Direct PLUS Loan;

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment.

(ii) Give the graduate or professional student borrower the opportunity to request the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible.

(34) A school may not originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in §685.203; or

(ii) Exceeds the student's estimated cost of attendance less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Direct Subsidized Loan, the borrower's expected family contribution for that period.

(45) (i) A school determines a Direct Subsidized or Direct Unsubsidized Loan amount in accordance with §685.203.

(ii) When prorating a loan amount for a student enrolled in a program of study with less than a full academic year remaining, the school need not recalculate the amount of the loan if the number of hours for which an eligible student is enrolled changes after the school originates the loan.

(56) The date of loan origination is the date a school creates the electronic loan origination record.

(~~67~~) If a student has received a determination of need for a Direct Subsidized Loan that is \$200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

(~~78~~) A school may refuse to originate a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, and if—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, gender, color, religion, national origin, age, disability status, or income.

(~~89~~) A school may not assess a fee for the completion or certification of any Direct Loan Program forms or information or for the origination of a Direct Loan.

(~~910~~) (i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(B) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(1) The length of the student's program at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) The maximum period for which a school may originate a Direct Loan is—

(A) Generally an academic year, as defined by 34 CFR 668.3, except that a school may use a longer period of time, not to exceed 12 months, corresponding to the period to which the school applies the annual loan limits under §685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

§ 685.304 Counseling borrowers.

(a) *Initial counseling.* (1) Except as provided in paragraph (a) (45) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) Except as provided in paragraph (a) (5) of this section, a school must ensure that initial counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan. The initial counseling must-

(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;

(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan provide the information specified in (a) (3) (i); and

(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct Subsidized or

Direct Unsubsidized Loan provide the information specified in paragraph (a) (4) (i) through (a) (4) (iv) of this section.

(32) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

~~(43) The initial counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers~~ must–

- (i) Explain the use of a Master Promissory Note (MPN);
- (ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;
- (iii) Describe the likely consequences of default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;
- (iv) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Direct Subsidized Loan, and Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained, ~~borrowers~~ at the same school or in the same program of study at the same school; and
- (v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

(54) A school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan described in §685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1)-(34) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must—

(i) Ensure that each student borrower subject to initial counseling under paragraph (a)(1) or (a)(2) of this section is provided written counseling materials that contain the information described in paragraph (a)(43) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(65) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(76) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(b) *Exit counseling.* (1) A school must ensure that exit counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan borrower shortly before the student borrower ceases at least half-time study at the school.

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(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student

borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, or student borrowers who have obtained Direct Subsidized, ~~and~~ Direct Unsubsidized Loans and Direct PLUS Loans, ~~borrowers,~~ depending on the types of loans the student borrower has obtained, for attendance at the same school or in the same program of study at the same school;

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**Proposed Regulatory Language
Loans Committee**

Origin: Community
Issue: FFEL/DL - Maximum Length of Loan Period
Regulatory Cite: §§682.401, 682.603 and 685.301

Summary of Change: Eliminate the maximum 12-month loan period for annual loan limits in the FFEL and Direct Loan programs and the 12-month period of loan guarantee in the FFEL program to allow institutions to certify a single loan for students in shorter non-term or nonstandard term programs and to provide greater flexibility in rescheduling disbursements for students who drop out and return within the permitted 180-day period.

Tentative Agreement: Yes

Change:

§682.401 Basic program agreement.

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(b) *Terms of agreement.* In the basic agreement, the guaranty agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford and SLS, loans made to a borrower may not exceed the amounts set forth in §682.204 (b), (e), and (g).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in §682.204 (a), (c), (d), (f), and (h).

(ii) A guaranty agency may make the loan amounts authorized under paragraph (b) (2) (i) of this section applicable for either—

(A) A period of not less than that attributable to the academic year as defined by 34 CFR 668.3; or

(B) A period attributable to the academic year, that is not less than the period specified in (2)(ii)(A) of this section, in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours; ~~or.~~

~~(C) A period that does not exceed 12 months.~~

(iii) The amount of a loan guaranteed may not exceed the amount set forth in §682.204(k).

§ 682.603 Certification by a participating school in connection with a loan application.

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(f)(1) The minimum period of enrollment for which a school may certify a loan application is—

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(A) ~~The~~The length of the student's program at the school; or

(B) ~~The~~The academic year as defined by the school in accordance with 34 CFR 668.3.

(2) The maximum period for which a school may certify a loan application is—

(i) Generally an academic year, as defined by 34 CFR 668.3, except that a guaranty agency may allow a school to use a longer period of time , not to exceed 12 months,

corresponding to the period to which the agency applies the annual loan limits under §682.401(b) (2) (ii); or

(ii) For a defaulted borrower who has regained eligibility under §682.401(b) (4), the academic year in which the borrower regained eligibility.

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) *Determining eligibility and loan amount. (1)*

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(9) (i) The minimum period of enrollment for which a school may originate a Direct Loan is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(B) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of—

(1) The length of the student's program at the school; or

(2) ~~The~~ Generally an ~~The~~ —academic year as defined by the school in accordance with 34 CFR 668.3 except that the school may use a longer period of time. A school may not define the period as less than the academic year as defined in 34 CFR 668.3.

(ii) The maximum period for which a school may originate a Direct Loan is—

(A) Generally an academic year, as defined by the school in accordance with —34 CFR 668.3, except that a ~~the~~ school may use a longer period of time, ~~not to exceed 12 months,~~ corresponding to the period to which the school applies the annual loan limits under §685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

**Proposed Regulatory Language
Loans Committee**

Origin: Community
Issue: FFEL/DL - Frequency of Capitalization
Regulatory Cite: §§682.202 and 685.202

Summary of Change: Limit the frequency of capitalization on Federal Consolidation Loans, consistent with the current treatment in the Direct Loan program, during any period of authorized deferment or forbearance. Capitalization will take place when the borrower changes status as the end of these authorized periods. (Note that the relevant section for Direct Loans is provided, but no modifications are necessary.)

Tentative Agreement: Yes

Change:

§682.202 Permissible charges by lenders to borrowers.

* * * * *

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

(2) Except as provided in paragraph (b) (4) and (b) (5) of this section, a lender may capitalize interest payable by the borrower that has accrued—

(i) For the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) For the in-school or grace periods, or for a period needed to align repayment of an SLS with a Stafford loan, if capitalization is expressly authorized by the promissory note (or with the written consent of the borrower);

(iii) For a period of authorized deferment;

(iv) For a period of authorized forbearance; or

(v) For the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(ii) through (iv) of this section no more frequently than quarterly. Capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(i) and (v) of this section only on the date repayment of principal is scheduled to begin.

(4)(i) For unsubsidized Stafford loans disbursed on or after October 7, 1998 and prior to July 1, 2000, the lender may capitalize the unpaid interest that accrues on the loan according to the requirements of section 428H(e)(2) of the Act.

(ii) For Stafford loans first disbursed on or after July 1, 2000, the lender may capitalize the unpaid interest--

(A) When the loan enters repayment;

(B) At the expiration of a period of authorized deferment;

(C) At the expiration of a period of authorized forbearance; and

(D) When the borrower defaults.

~~(5) For any Consolidation Loans, the lender may capitalize the unpaid interest-- as provided in paragraphs (b)(2) and (b)(3), except the lender may capitalize the unpaid interest for~~

~~(i) At the expiration of a period of authorized in-school deferment or forbearance; only at the expiration of the deferment or~~

~~(ii) When the borrower defaults.~~

(56) For any borrower in an in-school or grace period or the period needed to align repayment, deferment, or forbearance status, during which the Secretary does not pay interest benefits and for which the borrower has agreed to make payments of interest, the lender may capitalize past due interest provided that the lender has notified the borrower that the borrower's failure to resolve any

delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that will accrue through the remainder of that period.

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

* * * * *

(b) *Capitalization.* (1) The Secretary may add unpaid accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) For a Direct Unsubsidized Loan or a Direct Unsubsidized Consolidation Loan that qualifies for a grace period under the regulations that were in effect for consolidation applications received before July 1, 2006, the Secretary capitalizes the unpaid interest that accrues on the loan when the borrower enters repayment.

(3) Notwithstanding §685.208(1)(5) and §685.209(d)(3), for a Direct Loan not eligible for interest subsidies during periods of deferment, and for all Direct Loans during periods of forbearance, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment or forbearance.

(4) Except as provided in paragraph (b)(3) of this section and in §685.208(1)(5), and §685.209(d)(3), the Secretary annually capitalizes unpaid interest when the borrower is paying under the alternative or income contingent repayment plans and the borrower's scheduled payments do not cover the interest that has accrued on the loan.

(5) The Secretary may capitalize unpaid interest when the borrower defaults on the loan.

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: Community

Issue: FFEL/DL/Perkins - Simplification of Deferment Granting Process

Regulatory Cite: §§674.38, 682.210(i), 682.210(s), 682.210(t), and 685.204

Summary of Change: Allow FFEL lenders to grant graduate fellowship deferments, rehabilitation training program deferments, unemployment deferments, economic hardship deferments and military service deferments based on information from another FFEL loan holder or from the Department of Education. Also permit the Department of Education to grant a deferment on a Direct Loan based on information from a FFEL loan holder. Allows Perkins schools to grant deferments based on information from FFEL lenders or the Department of Education. Allows a borrower's representative to apply for a military deferment on behalf of the borrower.

Tentative Agreement: No

Change:

§ 674.38 Deferment procedures.

(a)(1) Except as provided in paragraph (a)(23) of this section, a borrower must request the deferment and provide the institution with all information and documents required by the institution by the date that the institution establishes.

(2) After receiving a borrower's written or verbal request, an institution may grant a deferment under §§ 674.34(b)(1)(ii), 674.34(b)(1)(iii), 674.34(b)(1)(iv), 674.34(d), 674.34(e), and 674.34(h) if the institution is able to confirm that the borrower has received a deferment on another Perkins Loan, a FFEL Loan, or a Direct Loan for the same reason and the same time period. The institution may grant the deferment based on information from the other Perkins Loan holder, the FFEL Loan holder or the Secretary or from an authoritative electronic database maintained or

authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(3) An institution may rely in good faith on the information it receives under paragraph (a) (2) of this section when determining a borrower's eligibility for a deferment unless the institution, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. An institution must resolve any discrepant information before granting a deferment under paragraph (a) (2) of this section.

(4) An institution that grants a deferment under paragraph (a) (2) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(25) In the case of an in school deferment, the institution may grant the deferment based on student enrollment information showing that a borrower is enrolled as a regular student on at least a half-time basis, if the institution notifies the borrower of the deferment and of the borrower's option to cancel the deferment and continue paying on the loan.

(6) In the case of a military service deferment under §§ 674.34(h) and 674.35(c) (1), a borrower's representative may request the military service deferment on behalf of the borrower.

(37) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b) (1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c) (1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(d) The institution must determine the continued eligibility of a borrower for a deferment at least annually, except that a borrower engaged in service described in §§674.34(e) (6), 674.35(c) (3), 674.36(c) (2), 674.37(c) (2), and §674.60(a) (1) must be granted a deferment for the lesser of the borrower's full term of service in the Peace Corps, or the borrower's remaining period of eligibility for a deferment under §674.34(e), not to exceed 3 years.

* * * * *

§682.210 Deferment.

* * * * *

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower **or a borrower's representative** shall provide the lender with—

(i) A written statement from the borrower's commanding or personnel officer certifying—

(A) That the borrower is on active duty in the Armed Forces of the United States;

(B) The date on which the borrower's service began; and

(C) The date on which the borrower's service is expected to end; or

(ii) (A) A copy of the borrower's official military orders; and

(B) A copy of the borrower's military identification.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis that is expected to last for a period of at least one year in length, as evidenced by official military orders, unless an order for national mobilization of reservists is issued.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i) (3) of this section.

* * * * *

(s) *Deferments for new borrowers on or after July 1, 1993—*
(1) *General.* (i) A new borrower who receives an FFEL Program loan first disbursed on or after July 1, 1993 is entitled to receive deferments under paragraphs (s) (2) through (s) (6) of this section. For purposes of paragraphs (s) (2) through (s) (6) of this section, a "new borrower" is an individual who has no outstanding principal or interest balance on an FFEL Program loan as of July 1, 1993 or on the date he or she obtains a loan on or after July 1, 1993. This term also includes a borrower who obtains a Federal Consolidation Loan on or after July 1, 1993 if the borrower has no other outstanding FFEL Program loan when the Consolidation Loan was made.

(ii) As a condition for receiving a deferment, except for purposes of paragraph (s) (2) of this section, the borrower

must request the deferment, and provide the lender with all information and documents required to establish eligibility for the deferment.

(iii) After receiving a borrower's written or verbal request, a lender may grant a deferment under paragraphs (s)(3) through (s)(6) of this section if the lender is able to confirm that the borrower has received a deferment on another FFEL loan or a Direct Loan for the same reason and same time period. —The lender may grant the deferment based on information from the other FFEL loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(iv) A lender may rely in good faith on the information it receives under paragraph (s)(1)(iii) of this section when determining a borrower's eligibility for a deferment, unless the lender, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. A lender must resolve any discrepant information before granting a deferment under paragraph (s)(1)(iii) of this section.

(v) A lender that grants a deferment under paragraph (s)(1)(iii) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL loan or to cancel the deferment and continue to make payments on the loan.

(2) *In-school deferment.* An eligible borrower is entitled to a deferment based on the borrower's at least half-time study in accordance with the rules prescribed in §682.210(c), except that the borrower is not required to obtain a Stafford or SLS loan for the period of enrollment covered by the deferment.

(3) *Graduate fellowship deferment.* An eligible borrower is entitled to a graduate fellowship deferment in accordance with the rules prescribed in §682.210(d).

(4) *Rehabilitation training program deferment.* An eligible borrower is entitled to a rehabilitation training program deferment in accordance with the rules prescribed in §682.210(e).

(5) *Unemployment deferment.* An eligible borrower is entitled to an unemployment deferment in accordance with the rules prescribed in §682.210(h) for periods that, collectively, do not exceed 3 years.

(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to an economic hardship deferment for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility under the 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(i) through (s)(6)(vi) of this section.

(i) Has been granted an economic hardship deferment under either the Direct Loan or Federal Perkins Loan Programs for the period of time for which the borrower has requested an economic hardship deferment for his or her FFEL loan.

(ii) Is receiving payment under a Federal or State public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or State general public assistance.

(iii) Is working full-time and has a monthly income that does not exceed the greater of (as calculated on a monthly basis)—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Services Block Grant Act.

(iv) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's monthly income, and that income, minus the borrower's Federal education debt burden, is less than 220 percent of the amount described in paragraph (s)(6)(iii) of this section.

(v) Is not working full-time and has a monthly income that—

(A) Does not exceed twice the amount described in paragraph (s) (6) (iii) of this section; and

(B) After deducting an amount equal to the borrower's Federal education debt burden, the remaining amount of the borrower's income does not exceed the amount described in paragraph (s) (6) (iii) of this section.

(vi) Is serving as a volunteer in the Peace Corps.

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s) (6) (iv) and (v) of this section, the lender shall—

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

(viii) For an initial period of deferment granted under paragraphs (s) (6) (iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income.

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s) (6) (iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

(x) For purposes of paragraph (s)(6) of this section, a borrower's monthly income is the gross amount of income received by the borrower from employment and from other sources, or one-twelfth of the borrower's adjusted gross income, as recorded on the borrower's most recently filed Federal income tax return.

(xi) For purposes of paragraph (s)(6) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(t) *Military service deferments for loans for which the first disbursement is made on or after July, 1, 2001*—(1) A borrower who receives an FFEL Program loan first disbursed on or after July 1, 2001, may receive a military service deferment for such loans for any period not to exceed 3 years during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304 or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which member is normally assigned.

(3) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as

defined in 10 U.S.C. 101(d) (5), under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(4) Payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment are not refunded.

(5) A borrower is eligible for a military service deferment on a Federal Consolidation Loan only if the borrower meets the conditions described in this section and all of the title IV loans included in the Consolidation Loan were first disbursed on or after July 1, 2001.

(6) As used in this section—

(i) *Active duty* means active duty as defined in 10 U.S.C. 101(d) (1) except that it does not include active duty for training or attendance at a service school;

(ii) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a) (13); and

(iii) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(7) To receive a military service deferment, the borrower, or the borrower's representative, must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military service deferment under the procedures specified in paragraphs (s) (1) (iii) through (s) (1) (v) of this section.

685.204 Deferment.

(a) (1) A Direct Loan borrower whose loan is eligible for interest subsidies and who meets the requirements described in paragraphs (b) and (e) of this section is eligible for a

deferment during which periodic installments of principal and interest need not be paid.

(2) A Direct Loan borrower whose loan is not eligible for interest subsidies and who meets the requirements described in paragraphs (b) and (e) of this section is eligible for a deferment during which periodic installments of principal need not be paid but interest does accrue and is capitalized or paid by the borrower.

(b) Except as provided in paragraphs (d) and (f) of this section, a Direct Loan borrower is eligible for a deferment during any period during which the borrower meets any of the following requirements:

(1) (i) The borrower—

(A) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending;

(B) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(C) Is pursuing a rehabilitation training program, approved by the Secretary, for individuals with disabilities; and

(ii) The borrower is not serving in a medical internship or residency program, except for a residency program in dentistry.

(iii) (A) For the purpose of paragraph (b) (1) (i) (A) of this section, the Secretary processes a deferment when—

(1) The borrower submits a request to the Secretary along with documentation verifying the borrower's eligibility;

(2) The Secretary receives information from the borrower's school indicating that the borrower is eligible to receive a new loan; or

(3) The Secretary receives student status information from the borrower's school, either directly or indirectly, indicating that the borrower is enrolled on at least a half-time basis.

(B) (1) Upon notification by the Secretary that a deferment has been granted based on paragraph (b) (1) (iii) (A) (2) or (3) of this section, the borrower has the option to continue paying on the loan.

(2) If the borrower elects to cancel the deferment and continue paying on the loan, the borrower has the option to make the principal and interest payments that were deferred. If the borrower does not make the payments, the Secretary applies a deferment for the period in which payments were not made and capitalizes the interest.

(2) (i) The borrower is seeking and unable to find full-time employment.

(ii) For purposes of paragraph (b) (2) (i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to the inability to find full-time employment using the standards and procedures set forth in 34 CFR 682.210(h) with references to the lender understood to mean the Secretary.

(3) (i) The borrower has experienced or will experience an economic hardship.

(ii) For purposes of paragraph (b) (3) (i) of this section, the Secretary determines whether a borrower is eligible for a deferment due to an economic hardship using the standards and procedures set forth in 34 CFR 682.210(s) (6) with references to the lender understood to mean the Secretary.

(c) No deferment under paragraphs (b) (2) or (3) of this section may exceed three years.

(d) If, at the time of application for a borrower's first Direct Loan, a borrower has an outstanding balance of principal or interest owing on any FFEL Program loan that was made, insured, or guaranteed prior to July 1, 1993, the borrower is eligible for a deferment during—

(1) ~~the~~ The periods described in paragraphs (b) and (e) of this section; and

(2) ~~the~~ The periods described in 34 CFR 682.210(b), including those periods that apply to a "new borrower" as that term is defined in 34 CFR 682.210(b) (7).

(e) (1) A borrower who receives a Direct Loan Program loan first disbursed on or after July 1, 2001, may receive a military service deferment for such loan for any period not to exceed 3 years during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

(3) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(4) These provisions do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(5) A borrower is eligible for a military service deferment on a Direct Consolidation Loan only if the borrower meets

the conditions described in this section and all of the title IV loans included in the Consolidation Loan were first disbursed on or after July 1, 2001.

(6) As used in this section—

(i) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(ii) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(iii) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(f) A borrower whose loan is in default is not eligible for a deferment, unless the borrower has made payment arrangements satisfactory to the Secretary.

(g) (1) To receive a deferment, except as provided under paragraph (b) (1) (i) (A) of this section, the borrower must request the deferment and provide the Secretary with all information and documents required to establish eligibility for the deferment. In the case of a deferment granted under paragraph (e) (1) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower.

(2) After receiving a borrower's written or verbal request, the Secretary may grant a deferment under (b) (1) (i) (B), (b) (1) (i) (C), (b) (2) (i), (b) (3) (i) and (e) (1) of this section if the Secretary confirms that the borrower has received a deferment on a FFEL Loan for the same reason and the same time period.

(3) The Secretary relies in good faith on the information obtained under paragraph (g) (2) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of determination, has information indicating that the borrower does not qualify for the deferment. The Secretary resolves any discrepant

information before granting a deferment under paragraph (g) (2) of this section.

(4) If the Secretary grants a deferment under paragraph (g) (2) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

**Proposed Regulatory Language
Loans Committee**

Origin: ED

Issue: FFEL - Eligible Lender Trustees

Regulatory Cite: §§682.200 and 682.602 (new)

Summary of Change: Implement The Third Higher Education Extension Act of 2006 (P.L. 109-292) by amending the definition of "lender" to eliminate the ability of a FFEL lender to enter into an eligible lender trustee (ELT) relationship with a school or a school-affiliated organization as of September 30, 2006, and grandfathering such relationships in existence prior to that date. Add a new definition of "school-affiliated organization," and create a new section to apply the same limits imposed on FFEL school lenders by the Higher Education Reconciliation Act (P.L. 109-148) to school and school-affiliated ELT arrangements as of January 1, 2007.

Tentative Agreement: No

Change:

§682.200 Definitions.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)-(5) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union-

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries'

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combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries. For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function.

(3) A bank that is subject to examination and supervision by an agency of the United States, making student loans as a trustee, may be an eligible lender if it makes loans under an express trust, operated as a lender in the FFEL programs prior to January 1, 1975, and met the requirements of this paragraph prior to July 23, 1992.

(4) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(5) The term "eligible lender" does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has--

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any school or other party to secure applicants for FFEL loans, except that a lender is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

(ii) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender;

(iii) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising with respect to its FFEL program loan activities.

(6) The term eligible lender does not include any lender that--

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 34 CFR part 85) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4;

(ii) Is an affiliate, as defined in 34 CFR part 85, of any person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

(7) An eligible lender may not make or hold a loan as trustee for a school, or for a school-affiliated organization as defined in this section unless, on or before September 30, 2006 -

(i) The eligible lender was serving as trustee for a school or a school-affiliated organization under a contract entered into and continuing in effect as of that date, and

(ii) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on that date.

(8) Effective January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006 and which continues in effect with a school or a school-affiliated organization, must comply with the requirements of §682.601(a) (3), (4), (5), (6), and (7), and (8).

* * * * *

School-affiliated organization. For the purpose of an eligible lender trustee arrangement with a lender, a school-affiliated organization is any organization that is directly or indirectly related to a school and includes, but is not limited to alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.

* * * * *

§682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.

(a) A school or school-affiliated organization may not contract with an eligible lender to serve as trustee for the school or school-affiliated organization unless—

(1) The school or school-affiliated organization originated and continues or renews a contract made on or before September 30, 2006 with the eligible lender; and

(2) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on that date.

(b) Effective July **January** 1, 2007, and for loans first disbursed on or after that date under a lender trustee arrangement that continues in effect after September 30, 2006 —

(1) A school in a trustee arrangement or affiliated with an organization involved in a trustee arrangement to originate loans must comply with the requirements of §682.601(a) except for subparagraphs **(a) (3)**, (a) (4), **(a) (7)**, and (a) (9); and

(2) A school-affiliated organization, as defined in §682.200(b), involved in a trustee arrangement to make loans must comply with the requirements of §682.601(a) except for subparagraphs (a) (1), (a) (2), **(a) (3)**, **(a) (4)**, and (a) (6), **(a) (7)**, and **(a) (9)**.

**Proposed Regulatory Language
Loans Committee**

Origin: ED

Issue: FFEL/DL/Perkins - ~~True and Exact~~ Accurate and Complete Copy of Death Certificates

Regulatory Cite: §§674.61, 682.402 and 685.212

Summary of Change: Allow the use of a ~~true-accurate~~ and ~~exact-complete~~ copy of a borrower's death certificate, in addition to the original or a certified copy of the death certificate, to support the discharge of a borrower's or parent borrower's Title IV loan.

Tentative Agreement: Yes

Change:

§674.61 Discharge for death or disability.

(a) *Death.* An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of an original, ~~or~~ certified, ~~or true-accurate and exactcomplete photo-~~ the original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon other reliable documentation supporting the discharge request.

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(b) *Death.* (1) If an individual borrower dies, or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(2) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on an original, ~~or~~ certified, ~~or true-accurate and~~

~~exact complete photo~~-copy of ~~the original or certified copy of~~ the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation supporting the discharge request.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower and any endorser for up to 60 days and promptly request the documentation described in paragraph (b) (2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original, ~~or certified,~~ ~~or true-accurate and exact complete photo~~-copy of ~~the original or certified copy of~~ the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b) (2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b) (2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's (or student's) death.

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or the student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on an original, ~~or~~ certified, or ~~true-accurate and exact complete photo-~~copy of ~~the original or certified copy of~~ the borrower's (or student's in the case of a Direct PLUS loan obtained by a parent borrower) death certificate.

(2) If an original, ~~or~~ certified, or ~~true-accurate and exact complete photo-~~copy of ~~the original or certified copy of~~ the death certificate is not available, the Secretary discharges the loan only based on other reliable documentation that establishes, to the Secretary's satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original, ~~or~~ certified, or ~~true-accurate and exact complete photo-~~copy of ~~the original or certified copy of~~ the death certificate only under exceptional circumstances and on a case-by-case basis.

(3) In the case of a Direct PLUS Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan obtained on behalf of a student who dies, the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the student's death, attributable to that Direct PLUS Loan or Federal PLUS Loan.

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: FFEL/DL/Perkins - Prospective Conditional Discharge Period to Establish Eligibility for a Total and Permanent Disability Discharge (i.e. "Retroactive" Total and Permanent Disability Discharges)

Regulatory Cite: §§674.61, 682.402 and 685.213

Summary of Change: Restructure the regulations to ensure alignment with the discharge process. Provide for a prospective conditional discharge period to establish eligibility for a total and permanent disability discharge that is three years in duration beginning on the date that the Secretary makes an initial determination that a borrower is totally and permanently disabled. Also, in order to qualify for a discharge, the borrower must meet the definition of total and permanent disability and receive no further title IV loans from the date the physician certifies the borrower's total and permanent disability on the discharge application.

Tentative Agreement: No

Change:

§674.61 -Discharge for death or disability

* * * * *

(b) Total and permanent disability. (1) General. A borrower's Defense, NDSL or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in §674.51(s), and satisfies the additional eligibility requirements contained in this section.

(2) Discharge application process. (i) To qualify for discharge of a Defense, NDSL or Perkins loan based on a total and permanent disability, a borrower must submit a discharge application approved by the Secretary to the

institution that holds the loan. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in §674.51(s). The borrower must submit the application to the institution within 3090 days of the date the physician certifies the application.

(ii) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled, the institution must suspend collection activities and assign the loan to the Secretary.

(iii) At the time the loan is assigned to the Secretary, the institution must notify the borrower that—

(A) —The loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and,

(B) In order to remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the Secretary makes an initial eligibility determination—

(1) The borrower cannot work and earn money or receive any new title IV loans; and

(2) The borrower must, within 120 days of the disbursement date, ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder.—

(3) Secretary's Initial Eligibility Determination. (i) The borrower must continue to meet the conditions of paragraph (b) (2) (iii) (B) of this section from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (b) (3) (ii) of this section.

(ii) If the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application. ~~The borrower's condition must continue to meet the conditions of the definition and the borrower must not receive any title IV loans until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (b)(3)(ii) of this section.~~

(iii) Upon making an initial determination that the borrower is totally and permanently disabled as defined in §674.51(s), the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years years, beginning on the date the Secretary makes the initial determination that the borrower is totally and permanently disabled. ~~upon making an initial determination that the borrower is totally and permanently disabled as defined in §674.51(s).~~ This ~~The~~ notification to the borrower identifies the conditions of the conditional discharge period specified in paragraph (b)(4)(i) of this section. The conditional discharge period begins on the date the Secretary makes the initial determination that the borrower is totally and permanently disabled.

(iiii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(4) Eligibility Requirements for a Total and Permanent Disability Discharge. (i) A borrower meets the eligibility criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(B) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; ~~and-~~

(C) The borrower ensures that the full amount of any title IV loan disbursement made on or after the date of the Secretary's initial eligibility determination is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

(C) Must promptly notify the Secretary of any changes in address or phone number;

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (4) (i) (A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(iii) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility requirements for a total and permanent disability discharge, the Secretary ends the conditional period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial determination described in paragraph (b) (3) of this section through the end of the conditional discharge period.

(5) Payments Received After the Physician's Certification of Total and Permanent Disability. (i) If, after the date the physician completes and certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or

attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender any payments received on the loan after the date the physician completed and certified the borrower's loan discharge application.

(c) No Federal Reimbursement. No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) Retroactive. Discharge for death applies retroactively to all Defense, NDSL and Perkins loans.

§685.213 Total and Permanent Disability

(a) General. A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the additional eligibility requirements contained in this section.

(b) Discharge application process. (1) To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit to the Secretary a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in §682.200(b). The certification must be on a form approved by the Secretary. The borrower must submit the application to the Secretary within 3090 days of the date the physician certifies the application.

(2) Upon receipt of the borrower's application, the Secretary notifies the borrower that—

(i) No payments are due on the loan; and
(ii) To remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the Secretary makes an initial eligibility determination—

(A) The borrower cannot work and earn money or receive any new title IV loans; and

(B) The borrower must, within 120 days of the disbursement date, ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completes and certifies the application is returned to the holder.

(c) Initial Determination of Eligibility. (1) The borrower must continue to meet the conditions of paragraph (b) (2) (ii) of this section from the date the physician completes and certifies the borrower's total and permanent disability on the application until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (c) (2) of this section.

(2) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application. ~~The borrower's condition must continue to meet the conditions of the definition and the borrower must not receive any further title IV loans until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (c) (2) of this section.~~

(2³) The Secretary suspends collection activity and notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years upon making an initial determination that the borrower is totally and permanently disabled as defined in §682.200(b). This notification identifies the conditions of the conditional discharge period specified in paragraph (d) (1) of this section. The conditional discharge period begins on the date the Secretary makes the initial

determination that the borrower is totally and permanently disabled.

(34) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.

(d) Eligibility Requirements for Total and Permanent Disability. (1) A borrower meets the eligibility requirements for a total and permanent disability discharge if, during and at the end of the three-year conditional discharge period—

(A) the borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(B) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures that the full amount of any title IV loan disbursement made to the borrower on or after the date of the Secretary's initial eligibility determination is returned to the holder within 120 days of the disbursement date.

(2) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

(C) Must promptly notify the Secretary of any changes in address or phone number;

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (d) (1) (A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(3) If the borrower continues to meet the eligibility requirements for a total and permanent disability discharge during and the end of the three-year conditional discharge period, the Secretary—

(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and

(ii) Returns to the borrower any payments received after the date the physician completed and certified the borrower's loan discharge application.

(4) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial determination described in paragraph (c) (2) of this section through the end of the conditional discharge period.

~~(c) Provisions for discharge of Direct Consolidation Loans.~~

~~(1) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under the provisions of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.~~

~~(2) For the purposes of discharging a loan under paragraph (c) (1) of this section, the provisions of this section apply to each loan included in the Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.~~

~~(3) If requested, a borrower seeking to discharge a loan obligation under paragraph (c) (1) of this section must~~

~~provide the Secretary with the disbursement dates of the underlying loans.~~

682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c) *Total and permanent disability.* (1) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process.* (i) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit, on a form approved by the Secretary, a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in §682.200(b). ~~The borrower must submit the application to the lender within 3090 days of the date the physician certifies the application.~~ If the lender and guaranty agency approve the discharge claim, under the procedures in paragraphs (c) (5) through (c) (6) of this section, the guaranty agency assigns the loan to the Secretary.

(3) *Secretary's Initial Eligibility Determination* (i) ~~From the date the physician completes and certifies the borrower's total and permanent disability on the application until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (c) (3) (ii) of this section—~~

~~(A) The borrower cannot work and earn money or receive any new title IV loans; and~~

~~(B) The borrower must, within 120 days of the disbursement date, ensure that the full amount of any title IV loan disbursement made to the borrower on or after the date the physician completes and certifies the application is returned to the holder.~~

(ii) If the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application. ~~The borrower's condition must continue to meet the conditions of the definition and the borrower must not receive any further title IV loans until the Secretary makes an initial determination of the borrower's eligibility in accordance with paragraph (c)(3)(ii) of this section.~~

(iii) Upon making an initial determination that the borrower is totally and permanently disabled as defined in §682.200(b), ~~The~~ the Secretary suspends collection activity and notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years ~~upon making an initial determination that the borrower is totally and permanently disabled as defined in §682.200(b).~~ This notification identifies the conditions of the conditional discharge specified in paragraph (c)(4)(i) of this section. The conditional period begins on the date the Secretary makes the initial determination that the borrower is totally and permanently disabled.

(iiiiv) If the Secretary determines that the certification and information provided by the borrower do not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(4) *Eligibility Requirements for Total and Permanent Disability Discharge.* (i) A borrower meets the eligibility criteria for a discharge of a loan based on total and permanent disability if, during and at the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and

(B) The borrower does not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL

or Direct Consolidation loan that does not include any loans that are in a conditional discharge status ~~—~~; and

(C) The borrower ensures that the full amount of any title IV loan disbursement made to the borrower on or after the date of the Secretary's initial eligibility determination is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered delinquent or in default on the loan, unless the borrower was delinquent or in default at the time the conditional discharge was granted;

(C) Must promptly notify the Secretary of any changes in address or phone number;

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c) (1) (ii) (A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.

(iii) If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the physician completed and certified the borrower's loan discharge application, are returned to the sender.

(iv) If, at any time during the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (c) (3) (ii) of this section through the end of the conditional discharge period.

~~(v) (A) For a Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (c) (1) (i) through (iii) of this section for all of the loans that were included in the Consolidation Loan if those loans had not been consolidated.~~

~~(B) For the purposes of discharging a loan under paragraph (c) (1) (iv) (A) of this section, provisions in paragraphs (c) (1) (i) through (iii) of this section apply to each loan included in the Consolidation Loan, even if the loan is not a FFEL Program loan.~~

~~(C) If requested, a borrower seeking to discharge a loan obligation under paragraph (c) (1) (iv) (A) of this section must provide the lender with the disbursement dates of the underlying loans if the lender does not possess that information.~~

(5) Lender and guaranty agency responsibilities (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c) (5) (iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in §682.200 (b).

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c) (3) of this section, the lender must resume collection

and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

~~(6) Guaranty agency responsibilities~~ (iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in §682.200(b).

(~~ii~~iv) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(~~iii~~vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(1)—~~The~~ loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(2) To remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the Secretary makes an initial eligibility determination—

(A) The borrower cannot work and earn money or receive any new title IV loans; and

(B) The borrower must request the cancellation or return to the holder of any disbursement of a title IV loan made to the borrower on or after date the physician completes and certifies the application.

(~~i~~vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower. |

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender. |

(~~v~~ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim. |

**Proposed Regulatory Language
Loans Committee**

Origin: ED

Issue: FFEL/Perkins - NSLDS Reporting
Timeframes

Regulatory Cite: §§682.208, 682.401, 682.414 and
674.16

Summary of Change: Require schools, lenders, and guaranty agencies to report enrollment and loan status information, or any other data required by the Secretary, to the National Student Loan Data system by the deadline date established by the Secretary.

Tentative Agreement: No

Change:

§682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, ~~and~~ establishing the terms of repayment, and reporting a borrower's enrollment and loan status information.

* * * * *

(i) A lender shall report enrollment and loan status information, or any other, Title IV loan related data required by the Secretary, to the guaranty agency or to the Secretary National Student Loan Data System, as applicable, by the deadline date established by the Secretary.

§ 682.401 Basic program agreement.

(b) * * *

(20) *Monitoring student enrollment.* The guaranty agency shall monitor the enrollment status of a FFEL program borrower or student on whose behalf a parent has borrowed that includes, at a minimum, reporting to the current

holder of the loan within ~~60~~30 days any change in the student's enrollment status reported that triggers—

- (i) The beginning of the borrower's grace period; or
- (ii) The beginning or resumption of the borrower's immediate obligation to make scheduled payments.

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

* * * * *

(b) *Reports.* A guaranty agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program at the time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

- (i) Schools.
- (ii) State or private nonprofit lenders.
- (iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).
- (iv) All other types of lenders.

(3) By July 1 of each year, a report on—

- (i) Its eligibility criteria for schools and lenders;
- (ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with §682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

~~(4) A guaranty agency shall report to the National Student Loan Data System Secretary the borrower's enrollment and loan status information, or any other, Title IV loan related data required by the Secretary, — by the deadline date established by the Secretary. Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).~~

(5) Any other information concerning its loan insurance program requested by the Secretary.

§ 674.16 Making and disbursing loans.

* * * * *

(i) (1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled, or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

~~(j) The institution shall report enrollment and loan status information, or any other, Title IV loan related information required by the Secretary, to the National~~

Student Loan Data System Secretary by the deadline date established by the Secretary.

**Proposed Regulatory Language
Loans Committee**

Origin: ED

Issue: FFEL/Perkins - MPNs: Retention of Records Supporting Disbursements to Borrowers

Regulatory Cite: §§674.19, 674.50, 682.406, 682.409 and 682.610

Summary of Change: Ensure that a record of an institution's delivery of loan disbursements to a borrower is retained by the institution, or is submitted to and retained by the FFEL lender and Guaranty Agency. Upon assignment of a defaulted MPN, a record of the disbursements must be provided by the institution or the Guaranty Agency to the Secretary.

Tentative Agreement: No

Change:

§674.19 Fiscal procedures and records.

* * * * *

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

~~(3) When assigning an electronically signed promissory note or MPN to the Secretary, an institution must submit an affidavit or certification, and supporting documentation specified by the Secretary, regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the of the institution's authentication and signature process.~~

(e) *Retention of records*—(1) *Records*. An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) *Loan records*.

(i) An institution shall retain a record of disbursements for each loan made to a borrower on an MPN. This record must show the date and amount of each disbursement.

(ii) For any loan signed electronically, an institution must maintain an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process.

~~(iii)~~ An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

~~(iv)~~ The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

(3) *Period of retention of disbursement records, electronic authentication and signature records, and repayment records*.

(i) An institution shall retain disbursement and electronic authentication and signature records for each loan made using an MPN until the loan is canceled, repaid, or otherwise satisfied.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format. **An original electronically signed MPN must be retained for 7 years after all the loans made on the MPN are satisfied.**

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked "paid in full" to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

* * * * *

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

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

(1) An assignment form provided by the Secretary and executed by the institution, which must include a

certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in §674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(11) A record of disbursements for each loan made to a borrower on a Master Promissory Note (MPN) that shows the date and amount of each disbursement.

(12) ~~For~~ Upon the Secretary's request with respect to any electronically signed promissory note or MPN, an affidavit or certification, and other supporting documentation as specified by the Secretary, regarding the creation and

maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process.

* * * * *

§682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if--

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds--

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with §682.207(b) (1) (ii) (B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

~~(3) The lender provided--~~

~~(i) The record of the school's delivery of the loan disbursements to the borrower;~~

~~(ii) If the MPN or promissory note was signed electronically, an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the lender's electronic MPN or promissory note, including the lender's authentication and signature process; and~~

~~(iii) The lender provided an An~~

(3) The lender provided an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender

exercised due diligence in collecting the loan through collection efforts meeting the requirements of §682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 30 days following payment of a default claim to the lender;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with §682.410(b)(6);

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a) (12) (ii) of this section; and

(v) Compliance with all default aversion assistance requirements in §682.404(a) (2) (ii).

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of §682.409; and

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under §682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a) (3) or (a) (5) of this section is set forth in appendix D to this part.

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of

evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

~~(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.~~

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) (1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The original or a true and exact copy of the promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application, if a separate application was provided to the lender.

(v) A payment history for the loan, as described in §682.414(a) (1) (ii) (C).

(vi) A collection history for the loan, as described in §682.414(a) (1) (ii) (D).

~~(vii) The record of the lender's disbursement of loan funds to the school for delivery to the borrower school's delivery of the loan disbursements to the borrower.~~

~~(viii) If the MPN or promissory note was signed electronically, an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the lender's electronic MPN or promissory note, including authentication and signature process the name and location of the entity in possession of the original electronic MPN.~~

(5) The agency may submit copies of required documents in lieu of originals.

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c) (4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

(d) (1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c) (3) (i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d) (2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under §682.410 (b) (3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

* * * * *

§682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) Records.

(1) * * *

(5) (i) A guaranty agency or lender may store the records specified in paragraphs (a) (4) (ii) (C)-(L) of this section in accordance with 34 CFR 668.24(d) (3) (i) through (iv).

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it electronically and it must be retrievable in a coherent format.

(iii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either

the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

(iv) If a lender made a loan based on an electronically signed MPN, the holder of the original electronically signed MPN must retain that original MPN for at least 7 years after all the loans made on the MPN have been satisfied.

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General*. Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;

(2) Follow the record retention and examination provisions in this part and in 34 CFR 668.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements*. In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school must maintain—

(1) A copy of the loan certification or data electronically submitted to the lender, that includes the amount of the loan and the period of enrollment for which the loan was intended;

(2) The cost of attendance, estimated financial assistance, and estimated family contribution used to calculate the loan amount;

(3) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(4) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower;

(5) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under §682.604(c)(3), if applicable, to deliver the initial and subsequent disbursements of each FFEL program loan; and

(6) Documentation of any MPN confirmation process or processes the school may have used.

(c) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guaranty agency, complete and return that report within 30 days of receipt to the Secretary or the guaranty agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guaranty agency within the next 60 days, notify the guaranty agency or lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended;

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis; or

(iv) If it discovers that a student who is enrolled and who has received a Stafford or SLS loan has changed his or her permanent address.

~~(d) Loan delivery reporting requirements. A school must report information to the lender on the delivery of each disbursement of loan funds to a borrower's account. This record must show the date and amount of each disbursement~~

~~and must be provided to the lender no later than 30 days
after the delivery of the disbursement to the borrower.~~

**Proposed Regulatory Language
Loans Committee**

Origin: ED

Issue: FFEL/Perkins - MPNs: Lender
Certification of E-Signatures

Regulatory Cite: §§674.19, 674~~5~~.50, 682.406, 682.409,
and 682.414

Summary of Change: Ensure that a record of an institution's or lender's electronic authentication and signature process is maintained by the institution or Guaranty Agency. Upon assignment of a defaulted MPN, a record of the certification of the electronic signature must be provided by the institution or the Guaranty Agency to the Secretary.

Tentative Agreement: No

Change:

§674.19 Fiscal procedures and records.

* * * * *

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary. ~~.-~~

~~(3) When assigning an electronically signed promissory note or MPN to the Secretary, an institution must submit an affidavit or certification, and supporting documentation specified by the Secretary, regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the of the institution's authentication and signature process.~~

(e) *Retention of records*—(1) *Records*. An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) *Loan records*.

(i) An institution shall retain a record of disbursements for each loan made to a borrower on an MPN. This record must show the date and amount of each disbursement.

(ii) For any loan signed electronically, an institution must maintain an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process.

~~(iii)~~ An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

~~(iv)~~ The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

(3) *Period of retention of disbursement records, electronic authentication and signature records, and repayment records*.

(i) An institution shall retain disbursement and electronic authentication and signature records for each loan made using an MPN until the loan is canceled, repaid, or otherwise satisfied.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules*. An institution shall keep the original

promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format. An original electronically signed MPN must be retained for 7 years after all the loans made on the MPN are satisfied.

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked "paid in full" to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

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

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a

first level collection effort as described in §674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(11) A record of disbursements for each loan made to a borrower on a Master Promissory Note (MPN) that shows the date and amount of each disbursement.

(12) Upon the Secretary's request with respect to any electronically signed promissory note or MPN, an affidavit or certification, and other supporting documentation as specified by the Secretary, regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process.

§682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

(1) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency;

(2) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with §682.207(b)(1)(ii)(B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

~~(3) The lender provided—~~

~~(i) The record of the school's delivery of the loan disbursements to the borrower;~~

~~(ii) If the MPN or promissory note was signed electronically, an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the lender's electronic MPN or promissory note, including the lender's authentication and signature process; and~~

~~(iii) The lender provided an An~~

~~(3) The lender provided an~~ accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of §682.411, including collection efforts against each endorser;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guaranty agency within 90 days of default;

(6) The lender resubmitted a properly documented default claim to the guaranty agency not later than 60 days from the date the agency had returned that claim due solely to inadequate documentation, except that interest accruing beyond the 30th day after the date the guaranty agency returned the claim is not reinsured unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to the 30th day;

(7) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition pursuant to written policies and procedures established by the agency;

(8) The agency paid or returned to the lender for additional documentation a default claim thereon filed by the lender within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 60th day after the date the lender originally filed the claim is not reinsured;

(9) The agency submitted a request for the payment on a form required by the Secretary no later than 30 days following payment of a default claim to the lender;

(10) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(11) The agency exercised due diligence in collection of the loan in accordance with §682.410(b)(6);

(12) The agency and lender, if applicable, complied with all other Federal requirements with respect to the loan including—

(i) Payment of origination fees;

(ii) For Consolidation loans disbursed on or after October 1, 1993, and prior to October 1, 1998, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 1.05 percent of the unpaid principal and accrued interest on the loan;

(iii) For Consolidation loans for which the application was received by the lender on or after October 1, 1998 and prior to February 1, 1999, payment on a monthly basis, of an interest payment rebate fee calculated on an annual basis and equal to 0.62 percent of the unpaid principal and accrued interest on the loan;

(iv) For Consolidation loans disbursed on or after February 1, 1999, payment of an interest payment rebate fee in accordance with paragraph (a)(12)(ii) of this section; and

(v) Compliance with all default aversion assistance requirements in §682.404(a)(2)(ii).

(13) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of §682.409; and

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under §682.411(h) to locate the borrower through the use of effective skip-tracing techniques, including contact with the schools the student attended.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(5) of this section is set forth in appendix D to this part.

(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.

~~(c) In evaluating a claim for insurance or reinsurance, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan~~

~~is unenforceable solely because of the lack of evidence of a confirmation process or processes, insurance and reinsurance benefits must be repaid.~~

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) (1) A guaranty agency must assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency must submit this information and documentation in the form (including magnetic media) and format specified by the Secretary.

(2) The guaranty agency must execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section. If more than one loan is made under an MPN, the assignment of the note only applies to the loan or loans being assigned to the Secretary.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of the activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

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(i) The original or a true and exact copy of the promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application, if a separate application was provided to the lender.

(v) A payment history for the loan, as described in §682.414(a) (1) (ii) (C).

(vi) A collection history for the loan, as described in §682.414(a) (1) (ii) (D).

(vii) The record of the school's lender's disbursement delivery of the loan funds to the school for delivery disbursements to the borrower.

(viii) If the MPN or promissory note was signed electronically, an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the lender's electronic MPN or promissory note, including authentication and signature process the name and location of the entity in possession of the original electronic MPN.

(5) The agency may submit copies of required documents in lieu of originals.

(6) The Secretary may accept the assignment of a loan without all of the documents listed in paragraph (c) (4) of this section. If directed to do so, the agency must retain these documents for submission to the Secretary at some future date.

(d) (1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c) (3) (i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) If the Secretary determines that the ability to collect the loan has been impaired under paragraph (d)(2) of this section, the Secretary assesses the agency the amount paid to the agency under the reinsurance agreement and accrued interest at the rate applicable to the borrower under §682.410(b)(3).

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address;

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower by the guaranty agency, and the amount of each payment that was attributed to principal, accrued interest, and collection costs and other charges, such as late charges;

(D) A collection history showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each

communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for default aversion assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset; and

~~(G) If the MPN or promissory note was signed electronically, an affidavit or certification, and other supporting documentation specified by the Secretary, regarding the creation and maintenance of the lender's electronic MPN or promissory note, including the lender's authentication and signature process.~~

(GHG) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) A guaranty agency must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than 5 years following the date the agency receives payment in full from any other source. However, in particular cases, the Secretary may require the retention of records beyond these minimum periods.

(3) A guaranty agency shall retain a copy of the audit report required under §682.410(b) for not less than five years after the report is issued.

(4) (i) The guaranty agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a) (4) (ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application if a separate application was provided to the lender;

- (B) A copy of the signed promissory note;
 - (C) The repayment schedule;
 - (D) A record of each disbursement of loan proceeds;
 - (E) Notices of changes in a borrower's address and status as at least a half-time student;
 - (F) Evidence of the borrower's eligibility for a deferment;
 - (G) The documents required for the exercise of forbearance;
 - (H) Documentation of the assignment of the loan;
 - (I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;
 - (J) A collection history showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time, and each request by the lender for default aversion assistance on the loan;
 - (K) Documentation of any MPN confirmation process or processes; and
 - (L) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.
- (iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

(iv) A lender shall retain a copy of the audit report required under §682.305(c) for not less than five years after the report is issued.

(5) (i) A guaranty agency or lender may store the records specified in paragraphs (a) (4) (ii) (C)-(L) of this section in accordance with 34 CFR 668.24(d) (3) (i) through (iv).

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it electronically and it must be retrievable in a coherent format.

(iii) A lender or guaranty agency holding a promissory note must retain the original or a true and exact copy of the promissory note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guaranty agency must return either the original or a true and exact copy of the note to the borrower or notify the borrower that the loan is paid in full, and retain a copy for the prescribed period.

(iv) If a lender made a loan based on an electronically signed MPN, the holder of the original electronically signed MPN must retain that original MPN for at least 7 years after all the loans made on the MPN have been satisfied.

(6) (i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the guaranty agency and the lender that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan(s). Such party(ies) must provide -

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan(s) in a form appropriate to ensure admissibility of the loan records in a legal proceeding. With the Secretary's approval, this certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the guaranty agency or lender, if necessary, to ensure

admission of the electronic records of the loan in the litigation or legal proceeding to enforce the loan.

(ii) The certification in subsection (i) must include, if requested by the Secretary -

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flowchart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when that borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that it has not been altered after it was executed;

(E) Documentation supporting the lender's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a) (6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary, including but not limited to a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The guaranty agency must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by a lender is not paid in full or otherwise satisfied, the holder of the original electronically signed promissory note is responsible for ensuring that all parties entitled to access, including the guaranty agency

and the Department of Education, have full and complete access to the electronic loan record.

**Proposed Regulatory Language
Loans Committee**

Origin: ED

Issue: Perkins - Child or Family Service
Cancellation

Regulatory Cite: §674.56

Summary of Change: Specify that to qualify for child or family service cancellation on a Perkins Loan, a borrower who is a full-time, non-supervisory employee of a child or family service agency must be providing services "directly and exclusively" to high-risk children from low-income communities.

Tentative Agreement: Yes

Change:

§674.56 Employment cancellation—Federal Perkins, NDSL and Defense loans.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, ~~or supervising the provision of,~~ services directly and exclusively to high-risk children who are from low-income communities and the families of these children, or who is supervising the provision of services to high-risk children who are from low-income communities and the families of these children. To qualify for a child or family service cancellation, a non-supervisory employee of a child or family service agency must be providing services only to high-risk children from low-income communities and the families of these children. The employee must work directly with the high-risk children from low-income communities, and the services provided to the children's families must be secondary to the services provided to the children. -

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or

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Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED
Issue: Perkins - "Reasonable" Collection Costs
Regulatory Cite: §674.45

Summary of Change: Limit collection costs an institution may assess against a Perkins Loan borrower to 30 percent of principal, interest, and late charges collected for first collection efforts, 40 percent for second collection efforts, and 40 percent plus court costs in cases of litigation.

Tentative Agreement: No

Change:

§674.45 Collection procedures.

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(e) (1) Subject to §674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§674.44, 674.46, 674.48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) Reasonable collection costs charged to the borrower may not exceed—

(i) For first collection efforts, 30 percent of the amount of principal, interest, and late charges collected;

(ii) For second and subsequent collection efforts, 40 percent of the amount of principal, interest, and late charges collected; or

(iii) For collection costs resulting from litigation, 40 percent of the amount of principal, interest and late charges collected plus court costs.

(34) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

**Proposed Regulatory Language
"Contextual Format"
Loans Committee**

Origin: ED

Issue: Perkins - Mandatory Assignment of Defaulted Loans

Regulatory Cite: §§674.8 and 674.50

Summary of Change: Provide the Department with the authority to require assignment of a Perkins Loan if the outstanding **principal** balance on the loan is **\$100** or more, the loan has been in default for **seven** or more years, and a payment has not been received on the loan in the **past 12 months**.

Tentative Agreement: No

Change:

§ 674.8 Program participation agreement

To participate in the Federal Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR part 668. The agreement further specifically provides, among other things, that-

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund-

(1) FCC received under this subpart;

(2) Except as provided in paragraph (a) (1) of §674.7-

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a) (1) of this section in award year 1993-94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994-95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of §674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

(4) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

(5) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(6) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(7) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for-

(1) Making loans to students;

(2) Administrative expenses as provided for in 34 CFR 673.7;

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see §674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see §674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes-

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year-

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year-

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

(d) (1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period. ~~7-07~~

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense. ~~7~~

(3) The institution shall, at the request of the Secretary, assign its rights to a loan to the United States without recompense if--

(i) The amount of outstanding principal is \$100.00 or more;

(ii) The loan has been in default, as defined in §674.5(c)(1), for seven or more years; and

(iii) A payment has not been received on the loan in the preceding twelve months, unless payments were not due because the loan was in a period of authorized forbearance or deferment.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

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§674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if-

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in §674.45(a) and litigation, if required under §674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is \$25.00 or greater; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

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

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in §674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

- (3) A copy of the repayment schedule.
 - (4) A certified copy of any judgment order entered on the loan.
 - (5) A complete statement of the payment history.
 - (6) Copies of all approved requests for deferment and cancellation.
 - (7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.
 - (8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.
 - (9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.
 - (10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.
- (d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.
- (e) The Secretary does not accept assignment of a loan if—
- (1) The institution has not provided the Social Security number of the borrower, unless the loan is submitted for assignment under paragraph 674.8(d)(3) of this section;
 - (2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order; or

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

(f) (1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g) (1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The Secretary may require the institution to reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

