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## Volume 5 - Perkins Loans

# Introduction



*The Federal Perkins Loan Program comprises Federal Perkins Loans, National Direct Student Loans (NDSLs), and National Defense Student Loans (Defense Loans). (No new Defense Loans were made after July 1, 1972, but a few are still in repayment.) Perkins Loans and NDSLs are low-interest (currently 5%), long-term loans made through school financial aid offices to help needy undergraduate and graduate students pay for postsecondary education.*

## LOAN TYPES

A loan made to a new borrower under the Federal Perkins Loan Program is a Perkins Loan. (New borrowers should have no outstanding balance on a Defense Loan or NDSL.) If the borrower has an outstanding balance on a Defense Loan or NDSL when the new loan is obtained, the new loan is an NDSL. Loans made from July 1, 1972 through June 30, 1987 were NDSLs. Loans made before July 1, 1972 were Defense Loans.

## RECENT CHANGES

### *Student eligibility*

**Student eligibility cite**
34 CFR 674.9(i)
34 CFR 674.9(j)

Effective July 1, 2002, if the Department has conditionally discharged (see below) the borrower's Perkins Loan or NDSL due to permanent and total disability and the borrower is applying for another Perkins Loan or NDSL, the borrower must:

- submit to the school a physician's certification that the borrower's condition has improved and that he or she is able to engage in substantial gainful activity;
- sign a statement acknowledging that any new or conditionally discharged Perkins Loan or NDSL cannot be discharged on the basis of any present impairment, unless the condition substantially deteriorates to the extent that the definition of total and permanent disability is again met; and
- sign a statement acknowledging that collection activity must resume on any conditionally discharged loans.

Also, the borrower is not eligible to receive any additional loans until the Department resumes collection on any conditionally discharged loans.

## New promissory notes

The Department issued new promissory notes, available for immediate use, in Dear Partner Letter CB-01-15. The new promissory notes reflect changes required by the Higher Education Amendments of 1998.

## Discharge due to death or total and permanent disability

**Disability discharge cite**
34 CFR 674.61(b)

Effective July 1, 2002, if your school concludes that a borrower is totally and permanently disabled, you must assign the account to the Department for a determination of eligibility for discharge. If the Department makes an initial determination that a borrower is eligible for discharge, the Department will place the loan in a three-year conditional discharge status.

CHAPTER 1

# Participation, Fiscal Procedures, & Records

*Schools must maintain funds and records according to the procedures of the Federal Perkins Loan Program.*

## PROGRAM PARTICIPATION AGREEMENT

**Program Participation Agreement cite**
34 CFR 674.8

A school that wants to participate in any Federal Student Aid (FSA) program must sign a Program Participation Agreement with the Secretary. (See *Volume 2 - Institutional Eligibility and Participation* for more general information about the Program Participation Agreement.) The agreement requires the school to submit annually to the Department a report containing information that will enable the Department to determine the school's cohort default rate (discussed in chapter 8 of this volume).

The agreement for the Federal Perkins Loan Program also requires the school to establish and maintain a Fund and to deposit into the Fund:

- the Federal Capital Contribution (FCC) the school receives as its federal allocation for the program for each award year (explained later in this chapter);
- the school's matching share—the institution's capital contribution (ICC), discussed on the next page;
- payments the school receives for repayment of loan principal, interest, collection charges, and penalty or late charges on loans from the fund;
- payments the school receives from the federal government for cancellations (such as teacher cancellations) of Perkins Loans and National Direct Student Loans (see chapter 6 of this volume);
- any other earnings on fund assets, including net interest earnings on funds deposited in an interest-bearing account (total interest minus bank charges incurred on the account); and
- proceeds of any short-term no-interest loans the school makes to the fund in anticipation of receipt of its FCC or of loan collections.

**Allocation cites**
HEA 462
34 CFR 673.4(a)

**Basis for initial allocation**
HEA 462(a)

**Basis for reallocation**
34 CFR 673.4(a)

**School's matching share**
34 CFR 674.8 (a)(2)

**Returned funds**
34 CFR 673.4(d)

## ALLOCATION OF FUNDS

As discussed in *Volume 4 - Campus-Based Common Provisions*, a school applies for program funds annually through the electronic Fiscal Operations Report and Application to Participate (FISAP). The Department allocates funds directly to schools. The allocation for the Federal Perkins Loan Program, the FCC, is the amount of funding the school is authorized to receive from the Department for an award year.

Beginning with the 2000-2001 award year, the Department will base your school's initial FCC allocation on the amount allocated for the 1999-2000 award year.

Your school's matching share or ICC is one-third of the FCC (or 25% of the **combined** FCC and ICC).

If a school returns unexpended Perkins funds, the Department reallocates 80% of the returned funds in accordance with the statutory formula in section 462(i) of the Higher Education Amendments of 1965, as amended, (HEA) and reallocates 20% in a manner that best carries out the purposes of the Federal Perkins Loan Program.

If a school returns more than 10% of its FCC, the Department will reduce the school's FCC for the second succeeding year by the dollar amount returned.

**Transfer of funds cite**
34 CFR 674.18(b)

**Work-colleges funds**
A work-college may transfer up to 100 percent of its initial and supplemental Perkins Loan allocations to the Work-Colleges Program. Any unexpended funds must be transferred back to the Federal Perkins Loan Program at the end of the award year.

## TRANSFER OF FUNDS

Your school may transfer up to a total of 25% of its FCC for an award year to either or both the Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS) programs.

Your school must match any Perkins funds transferred to FSEOG or FWS at the matching rate of that program, but the match doesn't have to be made until the transfer has occurred.

You must award transferred Perkins funds according to the requirements of the program to which they are transferred.

You must report any transfer of Perkins funds on the Fiscal Operations Report portion of the FISAP.

A school that transfers funds to the FWS, FSEOG, and/or Work-Colleges programs must transfer any unexpended funds **back** to the Federal Perkins Loan Program at the end of the award year.

**Perkins cash management cite**
34 CFR 674.19

## CASH MANAGEMENT

Each year, your school must submit a FISAP; your school must ensure that the information reported is accurate and must submit it on the form and at the time the Department specifies. (See volume 4 for more information about the FISAP.)

The cash management requirements that apply in general to FSA programs (those in the General Provisions) are discussed in volume 2. The cash management provisions that apply specifically to the Federal Perkins Loan Program follow.

## Account requirements

Under the General Provisions, your school must maintain the Perkins Loan Fund in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on fund proceeds is retained by the school as part of the Perkins Loan Fund.

**Insured account cite**
34 CFR 668.163(a)

A separate bank account for federal funds is not required, unless the Department specifies otherwise.

You must notify the bank that federal funds are deposited in an account. You may do this in writing (you must keep a copy of the notice in the school's file) or by giving the account a name that clearly indicates that federal funds are deposited in the account.

The school must maintain sufficient liquidity in the Perkins Loan Fund to make required disbursements to students.

## Transaction requirements

A school must deposit its ICC into its fund prior to or at the same time it deposits any FCC.

If a school credits a student's account at the school with Perkins Loan funds, the school must notify the student of the date and amount of the disbursement, the student's right to cancel all or a portion of that loan. The school must send this notice, either in writing or electronically, within 30 days of the date the loan is credited to the student's account. If the school sends the notice electronically, the school must require the student to confirm receipt of the notice, and must keep a copy of the confirmation.

A school may deduct from the interest earned any bank charges incurred as a result of maintaining the fund assets in an interest-bearing account, such as service charges, and deposit only the net earnings into the fund.

**Bank charges deduction cite**
34 CFR 674.8(a)(6)

A collection agency, collection attorney, or loan servicer is required to deposit funds collected into an interest-bearing account held by the school only if the agency, attorney, or servicer holds such amounts for more than 45 days. Such an account must be insured by an agency of the federal government, secured by collateral of reasonably equivalent value, or invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

**Deposit after 45 days cites**
34 CFR 674.48(c)(4)
34 CFR 674.48(d)(1)

### *Business requirements*

A school must establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse Perkins Loan funds to students.

A school must establish and maintain program and fiscal records that are reconciled at least monthly.

## RECORDKEEPING REQUIREMENTS

**Recordkeeping cites**
34 CFR 668.24
34 CFR 674.10(e)

A school must follow the recordkeeping requirements in the General Provisions (discussed in volume 2), those specific to the campus-based programs, and those specific to the Federal Perkins Loan Program. Perkins Loan records a school must maintain include, but are not limited to:

- documentation of each student's eligibility for a Perkins Loan;
- documentation of the amount of a Perkins Loan, its payment period, and the calculations used to determine the amount of the loan;
- documentation of the date and amount of each disbursement of Perkins Loan funds;
- information collected at initial and exit loan counseling required by Perkins Loan regulations.

**Records readily available for review cite**
34 CFR 668.24(d)

A school must make its records readily available for review by the Department or its authorized representative at an institutional location the Department or its representative designates. Generally, a school must keep records relating to the school's administration of a campus-based program or the Federal Pell Grant Program for three years after the end of an award year for which the aid was awarded and disbursed under those programs. There are some exceptions to this requirement:

- The school must retain the FISAP containing reported expenditures and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted.
- The school must keep repayment records for Perkins Loans, including records relating to cancellation and deferment requests for at least three years from the date a loan is repaid, canceled, or assigned to the Department.
- Records questioned in an audit or program review must be kept until the questions are resolved or until the end of the retention period applicable to the records, whichever is later.

For information on the formats in which a school must keep its campus-based program records, see volume 4.

## Repayment history and promissory note

**Repayment history and promissory note cite**
34 CFR 674.19(e)(2)

In addition to following the recordkeeping requirements mentioned in volume 2 and volume 4, a school must follow the procedures in 34 CFR 674.19 for documentation of a student's Perkins Loan repayment history. The school must maintain a repayment history for each borrower that shows:

- the date and amount of each repayment during the life of the loan;
- the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges;
- the date, nature, and result of each contact with the borrower (or endorser for loans made prior to July 23, 1992) in the collection of an overdue loan; and
- copies of all correspondence to or from the borrower (and endorser for loans made prior to July 23, 1992), except for bills, routine overdue notices, and routine form letters (demand letters, notices of intent to accelerate, and the like are not considered to be routine form letters).

**Returning the promissory note cite**
34 CFR 674.19(e)

When a loan has been repaid, the school should mark the note with the phrase "paid in full" and the date the loan was paid in full, have the note certified by a school official, and give or mail the original note to the borrower. The school must keep a copy of the note for at least three years after the date the loan is paid in full.

The school must keep the original signed promissory note and repayment schedule in a locked, fireproof container until the loan is repaid in full or until the original note and schedule are needed to enforce loan collection. Only authorized personnel may have access to these records.

If the original promissory note is released for the purpose of enforcing repayment, the school must keep a certified true copy. To qualify as a certified true copy, a photocopy (front and back) of the original promissory note must bear the following certification statement signed by the appropriate school official:

## Certification Statement

*"CERTIFIED TRUE COPY: I declare under penalty of perjury that the foregoing is a true and correct copy of the original Promissory Note.*

*Signature:* ____________________________________________

*Title:* ____________________________________________

*Date:* ____________________________________________*"*

Because a borrower must reaffirm a Perkins Loan that has been written off before he or she is eligible to apply for future federal student aid, the Department recommends that the school maintain a certified copy of the signed promissory note as well as a record of the full amount owed in its records beyond the three-year record retention requirement.

## REIMBURSEMENT TO THE FUND

The Department may require your school to reimburse its Perkins Loan Fund for any outstanding balance on an overpayment or a defaulted loan for which your school failed to record or retain the promissory note, record disbursements, or exercise due diligence. (Previously, the Department did not have the latitude to waive this requirement.)

Your school must also reimburse the Perkins Loan Fund for the amount of the administrative cost allowance claimed on any reimbursed portion of a loan.

You needn't reimburse the Perkins Loan Fund, if your school can recover the defaulted loan or show that the borrower would not have paid the loan even if your school properly exercised due diligence.

Also, you should not reimburse the Perkins Loan Fund for loans on which your school obtains a judgment.

# Student Eligibility

CHAPTER 2

## ELIGIBILITY CRITERIA

Both undergraduate and graduate students may receive loans under the Federal Perkins Loan Program. To be eligible for a Perkins Loan, a student must meet the general student eligibility requirements discussed in *Volume 1 - Student Eligibility* and must not have borrowed the maximum amounts listed in chapter 3 of this volume. A student who has earned a bachelor's or first professional degree may receive a Perkins Loan to pursue an **additional undergraduate** degree provided that he or she meets the eligibility requirements.

An individual who is serving in a medical internship or residency program (with the exception of a dental internship) is not eligible for a Perkins Loan.

An incarcerated student is not eligible for Federal Student Aid (FSA) loans, including Perkins Loans.

A borrower who is in default on an FSA loan is not eligible for a Perkins Loan unless she has regained eligibility. (See volume 1 for a discussion of regaining eligibility.) However, a borrower who satisfies any of the conditions that remove her loan from the school's cohort default rate becomes eligible for additional Perkins Loans. (Please see chapter 8 for a description of loans not included in a school's cohort default rate.)

A school may award a Perkins Loan and/or a Federal Work-Study (FWS) job to a student who is enrolled or accepted for enrollment at least half time in an eligible teacher certification or professional credential program. Eligibility criteria for such a program are discussed in *Volume 4 - Campus-Based Common Provisions.*

**Student eligibility cites**
34 CFR 674.9

**Medical internship or residency**
HEA 464(c)(2)(A)(i)

**Incarceration**
34 CFR 668.32(c)(2)(ii)

**Default**
HEA 464 (b)(1)

**Teacher certification programs**
34 CFR 668.32(a)(1)(iii)

# OTHER ELIGIBILITY FACTORS

## *Willingness to repay*

**Willingness to repay cite**
34 CFR 674.9(e)

In selecting Perkins Loans recipients, a school must consider evidence of a borrower's willingness to repay the loan. Previous delinquency, default, or other failure to meet repayment obligations on a previous loan is evidence that the borrower is unwilling to repay other loans.

For example, if a borrower has previously satisfied a defaulted student loan **involuntarily** (such as by garnishing the borrower's wages), a school should consider this as evidence of unwillingness to repay and should deny further loan assistance to the borrower.

## *Previous Perkins Loan write-off due to inability to collect*

**Loan write-off cite**
34 CFR 674.9(g)

If a borrower had a previous Perkins Loan, National Direct Student Loan (NDSL), or National Defense Student Loan (Defense Loan) that was written off because the school was unable to collect, the borrower must reaffirm the debt to receive a new Perkins Loan. Reaffirmation is not required if the amount written off was $25 or less. To reaffirm a debt that was written off, the borrower must acknowledge the loan in a legally binding manner (e.g., by signing a new promissory note, by signing a new repayment agreement, or by making a payment on the loan).

## *Previous Perkins Loan cancellation due to disability*

**Previous disability cancellation cite**
34 CFR 674.9(h)

If a borrower has obtained a discharge of a Perkins Loan or NDSL due to total and permanent disability and is applying for another Perkins Loan or NDSL, the borrower must:

- submit to the school a physician's certification that the borrower's condition has improved and that he or she is able to engage in substantial gainful activity; and
- sign a statement acknowledging that any new Perkins Loan or NDSL cannot be discharged on the basis of any present impairment, unless the condition substantially deteriorates to the extent that the definition of total and permanent disability is again met.

If a borrower's Perkins or NDSL loan is discharged for total and permanent disability between July 1, 2001 and July 1, 2002 and the borrower receives another loan within three years of the date the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the discharged loan.

Effective July 1, 2002, if the Department has conditionally discharged (see chapter 4) the borrower's Perkins Loan or NDSL due to total and permanent disability and the borrower is applying for another Perkins Loan or NDSL, the borrower must:

- submit to the school a physician's certification that the borrower's condition has improved and that he or she is able to engage in substantial gainful activity;
- sign a statement acknowledging that any new or conditionally discharged Perkins Loan or NDSL cannot be discharged on the basis of any present impairment, unless the condition substantially deteriorates to the extent that the definition of total and permanent disability is again met; and
- sign a statement acknowledging that collection activity will resume on any conditionally discharged loans.

Also, the borrower is not eligible to receive any additional loans until the Department resumes collection on any conditionally discharged loans.

### Previous Perkins Loan discharged in bankruptcy

As a result of the Bankruptcy Reform Act of 1994, a student may not be denied FSA loans, including Perkins Loans, solely on the basis of a bankruptcy determination. If a student has filed for or received a discharge in bankruptcy, has had an FSA loan discharged in bankruptcy, or has not paid an FSA loan that has been determined by a court of law to be dischargeable in bankruptcy, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of a future Perkins Loan or other FSA loans. A student is no longer required to establish eligibility for a new student loan by agreeing to repay the loan discharged in bankruptcy. However, schools may continue to consider the student's post-bankruptcy credit history in determining willingness to repay.

**Previous bankruptcy discharge cite**
Bankruptcy Reform Act of 1994

## SELECTION PROCEDURES

When awarding Perkins Loans, a school must give priority to those students with exceptional financial need, as defined by the school, using procedures it establishes for that purpose. The school's selection procedures must be in writing, uniformly applied, and kept on file at the school.

Before a school can award a student a Perkins Loan, the school must determine his or her eligibility for a Federal Pell Grant. For the purposes of developing aid packages, the school may use a preliminary hand calculation to determine Federal Pell Grant eligibility after a student has filed a Free Application for Federal Student Aid (FAFSA). However, the school may not disburse a Perkins Loan to a student until he or she has an "official" Expected Family Contribution (EFC) that has been calculated by the CPS for the same award year in which the disbursement will be made.

**Selection procedures cites**
34 CFR 674.10

**Exceptional need**
34 CFR 674.10(a)(1)

**Pell eligibility**
34 CFR 674.9(d)

**Independent and less-than-full-time students**
34 CFR 674.10(b)

**Equal credit opportunity**
34 CFR 674.20

**Selection procedures example**
When packaging aid, Barton University first awards Perkins Loans to full-time third-year students whose financial need is at least $500 after their EFCs, Pell Grants, and any scholarships received have been subtracted from the cost of attendance. Next, the University awards Perkins Loans to full-time second-year students whose financial need is at least $750. The school continues to award Perkins Loans to such pre-defined groups until the Fund is exhausted or all exceptional financial need is met.

A school must offer a **reasonable proportion** of the dollar amount of the loans made from its Perkins Loan revolving fund to independent or less-than-full-time students, if the school's Federal Capital Contribution (FCC) was partly based on the financial need of these students (as reported on the FISAP).

In administering the Federal Perkins Loan Program, a school must comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202). The Department considers the Federal Perkins Loan Program to be a credit assistance program authorized by federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, a school may request that a loan applicant disclose marital status, income from alimony, child support, and spouse's income and signature.

# Making & Disbursing Loans

CHAPTER 3

*A Perkins Loan (or NDSL) is made when the borrower has signed the promissory note for the award year and the school makes the first disbursement of loan funds under that promissory note for that award year. The student is required to sign the note only once each award year. The borrower must sign before the school disburses any loan funds to him or her under that note for that award year. However, a school may choose to require a borrower to sign for each advance.*

After a student files a FAFSA and the Department determines an official Expected Family Contribution for the student, the school must award financial aid based on the student's maximum loan eligibility and the maximum loan amounts for each loan program. For a complete explanation of awarding financial aid, see *Volume 1 - Student Eligibility* and *Volume 4 - Campus-Based Common Provisions.*

**Maximum Loan Eligibility Calculation**

| | |
|---|---|
| | Financial Need |
| (-) | Other resources |
| = | Maximum Perkins Loan |

**Loan limits cite**
34 CFR 674.12

**Annual maximum loan:**
Undergraduate: $4,000
Graduate: $6,000

**Aggregate maximum loan:**
Undergraduate: $20,000
Graduate: $40,000

## LOAN MAXIMUMS

The maximum amount an eligible student may borrow is $4,000 per award year for a student who has not successfully completed a program of undergraduate education or $6,000 per award year for a graduate or professional student.

The aggregate loan limits now include only unpaid principal. (Previously, a student who had borrowed the maximum cumulative amount for a graduate or professional student would not be eligible for another loan even if the student had repaid part or all of the amount he or she had borrowed.) The maximum aggregate amount an eligible student may now borrow is: (1)$20,000 for an undergraduate student who has completed two academic years and is pursuing a bachelor's degree; (2)$40,000 for a graduate or professional student, including loans borrowed as an undergraduate student; and (3)$8,000 for any student who has not completed two academic years of undergraduate work.

The annual maximums and aggregate maximums include any amounts borrowed previously under the Federal Perkins Loan Program.

Because previous aggregate loan maximums were not tied to the completion of two academic years of undergraduate work, schools may have inadvertently created an overaward by awarding more than $8,000 to borrowers who had not completed two undergraduate years. The Department will not require schools to resolve such overawards if they were made prior to the publication of the revised statutory

**Overaward resolution cite**
FR Vol. 64, No. 145, pg. 41235

maximums. (The proposed rule for the revised statutory maximum was published on July 29, 1999.)

A school may disburse a Perkins Loan to a student engaged in a program of study abroad if the student meets all eligibility requirements and is enrolled in an eligible program at the school that will accept credits earned abroad. If the reasonable costs of the foreign study program exceed the cost of attending the home school, the awarded Perkins Loan may exceed the annual and/or aggregate loan limits by up to 20%.

A student enrolled in a teacher certification program may be considered either an undergraduate or a graduate student as determined by the school. A teacher-certification student who is considered to be a graduate student and who has already borrowed the maximum aggregate allowed for an undergraduate is eligible to receive an additional Perkins Loan or NDSL. A teacher-certification student who is considered to be an undergraduate student and who has already borrowed the maximum aggregate allowed for an undergraduate is not eligible to receive an additional Perkins Loan or NDSL.

## DISCLOSURE TO STUDENTS

**Disclosure cite**
34 CFR 674.16(a)

**Before making the first Perkins Loan or NDSL disbursement**, the school must have the student sign the promissory note. (Promissory notes are discussed later in this chapter.) The school must inform the student of her rights and responsibilities under the Federal Perkins Loan Program. The school must also remind the student that the loan may be used only for educational expenses and that the loan must be repaid. The school should also inform the student that the **school** holds the promissory note.

The school must disclose all information to the student **in writing**—as part of the application material, as part of the promissory note, or on a separate form. Although the information can be mailed to a student, it is preferable for the aid administrator to meet with the student to answer any questions and to emphasize his or her responsibility to repay the loan.

The school must review all of the repayment terms in the promissory note. In addition, the school must give the following information to the student:

- the name and address of the school to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent;
- the maximum annual and aggregate amounts the student may borrow;
- the effect that accepting the loan will have on the borrower's eligibility for other types of student aid;

- a statement of the total cumulative balance owed by the student to that school and an estimate of the monthly payment amount needed to repay that balance;
- options the borrower may have to consolidate or refinance;
- a brief notice about the Department of Defense program for repaying loans based on certain military service;
- a complete list of charges connected with making the loan, including whether those charges are deducted from the loan or whether the student must pay them separately; and
- a notice that the school will report the outstanding balance of the loan to a national credit bureau **at least annually**.

The school should also update the identification and contact information in the promissory note and collect the following additional contact information:

- the name, address, and telephone numbers of the borrower's parents and spouse;
- the spouse's employer;
- the names and addresses of two or three of the student's personal acquaintances;

The additional contact information gained during loan counseling could be valuable later for use in collection procedures, and it will help the school locate a student who leaves school without notice or who does not attend the exit interview. However, this counseling may not be used to satisfy the requirement for an exit interview. (See chapter 7 of this volume.)

## THE PROMISSORY NOTE

**Promissory note cite**
34 CFR 674.31

The promissory note is the legally binding document that is evidence of a borrower's indebtedness to a school. A student must sign this note before he or she can receive any Perkins Loan funds and must receive a copy of the note at (or before) the exit interview. The note includes information about the loan's interest rate, repayment terms, and minimum rates of repayment; deferment, forbearance, and cancellation provisions; credit-bureau reporting; late charges, attorney fees, collections costs, and consequences of default.

If the school does not have a valid note or other written evidence that would be upheld in a court of law, the school has no recourse against a borrower who defaults. Two examples of invalid notes are notes that have been changed after they were signed and notes without proper signatures or dates for loan advances. In such cases, the school would have to repay to its Perkins Loan Fund any amounts loaned, whether recovered from the borrower or not, as well as any Administrative Cost Allowance (ACA) claimed on those amounts.

If an error is discovered in a promissory note, the school should obtain legal advice about what action it should take. The appropriate school official and the student should sign by or initial all approved changes in the note.

**Retention of records cite**
34 CFR 674.19(e)(4)(iii)

When the borrower has fully repaid the Perkins Loan, the school must mark the note "paid in full," have it certified by an official of the school, and give the original note to the borrower. The school must keep a copy of the note for at least three years after the date the loan was paid in full.

## *Approved promissory notes*

A school must use a promissory note that the Department has approved. In Dear Partner Letter CB-01-15, dated November 2001, the Department issued *new* **open-end** and **closed-end** approved promissory notes for NDSLs and Perkins Loans. (Although schools no longer issue NDSLs to new borrowers, schools must issue NDSLs to borrowers who have outstanding balances on previous NDSLs or Defense Loans.) See Appendix A for copies of the approved promissory notes.

The new Federal Perkins Loan and NDSL promissory notes are available for use immediately. Schools must use the new promissory notes no later than May 1, 2002. On or after May 1, 2002, schools may not use the notes issued as part of Dear Colleague Letters CB-96-8 or CB-93-9. The new promissory notes are authorized for use through October 31, 2004.

The new promissory notes reflect changes required by the Higher Education Amendments of 1998. The major changes made to the promissory notes include:

- provisions for the implementation of the loan rehabilitation program and clarification that the 24% cap on collection costs that may be assessed on a rehabilitated loan does not apply if the borrower defaults again on the rehabilitated loan;
- retained grace periods for borrowers who are ordered to active duty for a period of more than 30 days;
- notification of the availability of the Department of Education's Student Loan Ombudsman;
- the expansion of borrower eligibility for volunteer service cancellations for NDSL loans;
- the addition of a new section on Discharges;
- the addition of the Privacy Act Notice, Financial Privacy Act Notice, and the Paperwork Reduction Notice;
- a correction to the cross-references to the Individuals with Disabilities Act (IDEA)  to reflect statutory changes as a result of the reauthorization of IDEA in 1997;

- revisions to the Deferment section to reflect that deferment requests no longer need to be in writing and that it is no longer necessary for a borrower to request an in-school deferment; and
- revisions to the Deferment section relating to economic hardship deferments for borrowers who are in the Peace Corps or who have received an economic hardship deferment under the Federal Family Education Loan Program or the William D. Ford Federal Direct Loan Program.

In addition, minor editorial changes were made in various sections of the promissory notes.

Schools may not make changes to, deletions from, or additions to the prescribed language. However, you may delete bracketed text. Of course, you may print information (name, address, and telephone number) identifying your school in Section B, Item 6. You may also use appropriate coding (for example, bar coding to reflect the source, type, or other identification system for filing or processing) in this area. You may print bar coding or coding identifiers, such as student ID number or loan number, in the side or bottom margins to meet the requirements of your school's processing systems. You may not print these coding identifiers on the promissory notes in a way that would alter the general layout of the note. You may also print in the lower margin of the promissory note a reference to the type: for example, original, student copy, file copy.

**Limits to promissory note changes cite**
34 CFR 674.31 (a)

You must print the promissory notes with black ink on white paper. You may not change the typeface, point size, and general presentation of the form from the documents approved by ED. However, you may print your school's identifying information located in Section B, Item 6 in another color to make your school's name and address more pronounced.

## Closed-end vs. open-end

**"Closed-end" or "Limited" Note.** This note is valid for not more than 12 months and usually covers one award year or one academic year. It may also be used for a single academic term. The loan amount must be entered in the note. Closed-end notes can be designed for a single disbursement (if the award is less than $501) or multiple disbursements.

**"Open-end" Note.** Schools can use an open-end promissory note to make loans for more than one award year. The borrower signs next to the specified amount of the approved loan each time the school awards a new loan. If a school uses an open-end note, it does not have to issue new notes for future loans it makes to the same borrower **unless** the requirements of the Federal Perkins Loan Program are changed by statute or regulation.

Boxes 9 and 10 on the "open-end" Note are intended to show the loan amount and loan period for the first year that the borrower takes out a loan. The borrower would then sign and date the Note on the bottom of the page. For each subsequent year, the loan amount, loan period, date, and signature would be filled out in the columns beneath Items 9 and 10. If the borrower does not take out any additional Perkins Loans in later years, the columns would be left blank.

## *Changes in loan amount*

If a student's initial loan amount **decreases** and a disbursement has been made, the school can choose one of the following options:

- It may leave the loan amount unchanged. (The school's disbursement records will reflect the decreased loan amount. The school may also attach a statement to the promissory note to explain the decreased loan amount.)
- It may change the face of the promissory note to reflect the decreased loan amount. Both the student and the appropriate school official must initial the decrease. A school must not unilaterally change the amount of the loan.

If the student has signed the promissory note and the initial loan amount **increases after a disbursement has been made**, the action a school must take depends on the type of promissory note involved:

- If the student signed a closed-end promissory note, the school **must** issue a new closed-end note reflecting only the increase from the original loan amount.
- If the student signed an open-end promissory note, the school **must** reflect only the increase in the loan amount on the next line of the note.

## *Minimum monthly payment option*

The optional provision regarding a minimum monthly payment amount is included as a single, optional sentence at the end of the repayment paragraph on page 1 of the promissory notes. A school would include this sentence in the promissory note if the school is exercising the minimum monthly payment amount provision. Page 2 of the promissory notes includes a summary of this provision.

If the optional provisions are included in the school's note, a minimum monthly payment of $40 is required for a loan made on or after October 1, 1992 to a borrower who had no outstanding balance on a Perkins Loan, NDSL, or Defense Loan on the date the loan was made. (For other borrowers, the monthly minimum amount remains $30.)

## GENERAL DISBURSEMENT REQUIREMENTS

A school must disburse funds in accordance with the cash management requirements of the General Provisions. These requirements are discussed in *Volume 2 - Institutional Eligibility and Participation.* This section discusses disbursement requirements that apply specifically to the Federal Perkins Loan Program.

### *Power of attorney*

A school official may not use a student's power of attorney to endorse any disbursement check or to sign for any loan advance unless the Department has granted prior approval. Approval may be granted only if:

- the borrower is not available to sign the promissory note and there is no one else (such as a relative, landlord, or member of the clergy) who could act on behalf of the student;
- the school shows that the funds cannot be directly deposited or electronically transferred;
- the power of attorney is not granted to a school official or any other official who has an interest in the loan; and
- the power of attorney meets all legal requirements under the law of the State in which the school is located and the school retains the original document granting power of attorney in its files.

**Power of attorney cite**
34 CFR 674.16(h)

### *Frequency of disbursements*

A school that is awarding a Perkins Loan for a full academic year must advance a portion of the loan during each payment period, **even if it does not use standard academic terms**.

**Frequency of disbursements cite**
34 CFR 674.16(b)

In general, to determine the amount of each disbursement, a school will divide the total loan amount by the number of payment periods the student will attend. For a school that measures progress in credit hours and has academic terms, a payment period is defined as a term (a semester, trimester, quarter, or nonstandard term). The definition of payment period for a school that does not have academic terms or a school that measures progress in clock hours is discussed in detail in volume 2.

A school may advance funds **within** a payment period in whatever installments it determines will best meet the student's needs. However, if the total Perkins Loan amount awarded a student is less than $501 for an academic year, only one payment is necessary.

### *Uneven costs/unequal disbursements*

If a student incurs uneven costs or resources during an academic year and needs additional funds during a payment period, the school

**Uneven costs/unequal disbursements example cite**
Dan will receive a $1,000 Perkins Loan and must spend $300 for books and supplies at the beginning of the school year. Ingram College could disburse that $300 along with the first payment. To determine the first payment, Ingram College subtracts the extra amount (in this case, $300) from the total loan ($1,000) and divides the remainder ($700) by the number of payment periods (in this case, 2). Ingram College then adds the regular amount for one payment period ($350) to the extra amount ($300) to determine the initial payment ($650). The remaining amount ($350) is then disbursed during the second payment period for a total loan of $1,000.

**Uneven costs/unequal disbursements cite**
34 CFR 674.16(c)

**Paying before the student begins attendance cite**
34 CFR 674.16(f)

**Credit bureau reporting cite**
34 CFR 674.16(i)

**Uneven Costs/Unequal Disbursement Example**

| | |
|---|---|
| *$1,000* | *Total Loan* |
| *- $ 300* | *Additional Costs at Start of School* |
| *$ 700* | *÷ 2 Payment Periods = $350 Regular Payment* |
| *$ 350* | *Regular Payment* |
| *+$ 300* | *Extra for Books & Supplies* |
| *$ 650* | *Total First Disbursement ($350 = Second Disbursement)* |

may advance the additional amount to the student in whatever manner best meets the student's needs. The school may exercise this option **regardless of whether or not the school uses standard academic terms**.

## *Returning funds disbursed prior to attendance*

If a school advances funds to a student who withdraws or is expelled before the first day of classes, or never begins attendance, all funds disbursed are considered an overpayment. The school must return any advanced amounts to the Perkins Loan Fund.

## *Credit bureau reporting*

Schools must report the date and amount of each disbursement of Federal Perkins Loan to at least one national credit bureau. (Please see chapter 7 for more information about credit bureau reporting.)

## New Promissory Notes

### Questions and Answers

#### BOXES 9 AND 10 ON THE OPEN-END NOTE

Q. Why does the open-end note contain boxes 9 and 10 (loan amount and loan period), since the open-end notes are designed to accommodate multiple loans. What amount should campuses put in box 9, loan amount—the entire amount of disbursements or the first disbursement? If it is the entire amount, then the box could not be filled in until the student received his/her last disbursement.

A. Put the loan amount and loan period for the first year in Items 9 and 10. Have the borrower sign and date the note on the bottom of the page. For each subsequent year, put the loan amount, loan period, date, and signature in the columns beneath Items 9 and 10. If the borrower does not take out any additional Perkins Loans in later years, leave the columns blank.

On the old version of the open-end promissory note, there were two places for a first-year borrower to sign, once in the "Borrower's Signature" column, and again at the bottom of the page. The newly approved open-end promissory note only requires one signature for a first-year borrower.

#### CHANGES TO THE NOTES

Q. May schools make changes to the promissory note, such as adding text or data elements? May schools reduce the number of pages of the note by printing it on legal-size paper rather than letter-size? May schools make "non-substantive changes" to the note, such as changes in font, type size, etc?

A. The old Perkins promissory notes were not OMB-approved forms, and schools were permitted to include additional data elements or to make "nonsubstantive" changes to the notes. The new promissory notes -- the text, data elements and format -- have been approved by OMB. Schools may not add data elements, change or add language, or alter the general layout of the note. Schools may only make minimal modifications to these OMB-approved promissory notes, as described in Dear Partner Letter CB-01-13. These limitations on the modifications that schools may make to the Perkins promissory notes are consistent with the limitations on modifications that lenders and guaranty agencies are permitted to make to promissory notes in the Federal Stafford, PLUS, and Consolidation Loan programs.

#### THE HEIGHT OF THE BOXES

Q. The boxes in Sections A and B are not big enough to print the required information in. Can we increase the height of these boxes?

A. Schools may increase the height of the boxes to meet the requirements of individual processing systems, as long as the change doesn't alter the general layout of the form, result in reduced point size, move text from one page to another, or otherwise change the general presentation of the form.

**Questions and Answers (cont'd)**

## NUMBER OF PAGES

Q. Do I print the promissory note on two double-sided pages or on four single-sided pages?

A. It's preferable for the school to print the promissory note on two sheets of paper, front and back. However, schools may print the note on four single-sided pages as well. Schools may also print the forms front and back on one, 11" by 17" sheet of paper that, when folded over, forms a pamphlet of four 8 1/2" by 11" pages. This would retain the same general presentation of the form and the four-page format.

## IMPLEMENTATION DATE OF THE NEW PROMISSORY NOTE

Q. Is it okay to start using the new promissory note the beginning of the Spring 2002 semester? If we use the open-ended promissory note, is it necessary for returning students who have had awards before to sign the new open-ended promissory note, or can they sign the old open-ended promissory note?

A. Students who have Perkins Loans for the 2001-2002 academic year are not required to sign the new promissory notes for their Perkins Loans. However, as of May 1, 2002, borrowers will have to sign the new promissory notes for any subsequent Perkins Loans they receive.

You can begin using the new Perkins promissory notes at any time. If you choose to use the new open-ended note for the Spring semester, 2002, you should close out the old promissory note and have the borrower sign the new one. If you choose to continue using the old open-ended promissory note, just have the borrower sign the note as they normally do. However, the old versions of the promissory notes may no longer be signed by borrowers after May 1, 2002. Any borrower signing for a loan after May 1, 2002, will have to sign the new promissory note.

## USE OF COLOR PAPER

Q. Can I print the borrower, file, and exit copy of the promissory note on colored paper, and the original on white paper?

A. The original and borrower copies of the notes must be printed in black ink on white paper (except the information in Section B. 6 may be printed with different color ink if the institution wants to make that information stand out).

## CODING IDENTIFIERS

Q. Can we add student ID number and note number [or other identifying information] in the margin of the note?

A. You may print coding in the margins to meet the requirements of individual processing systems, as long as they are not printed on the promissory note in a way that would alter the general layout of the note.

# Repayment

CHAPTER 4

*Repayment terms vary substantially among Perkins Loans, National Direct Student Loans, and National Defense Student Loans. Schools may choose to obtain software from third-party vendors that have automated many of the following requirements and calculations.*

## GRACE PERIODS

A "grace period" is the period of time before the borrower must begin or resume repaying a loan. An "initial grace period" is one that immediately follows a period of enrollment and immediately precedes the date repayment is required to begin for the first time.

**Initial grace period definition cite**
34 CFR 674.2

### *Initial grace periods*

A borrower who has been attending at least half time is entitled to an initial grace period of nine consecutive months after dropping below half-time enrollment.

**Length of initial grace period cite**
34 CFR 674.31(b)(2)(i)(B)

For a student attending at least half time, the initial grace period does not end until he or she ceases to be enrolled at least half time for a continuous period of nine months. A borrower who returns to school on at least a half-time basis prior to completion of the initial grace period is entitled to a full initial grace period (nine consecutive months) from the date that he or she drops below half-time enrollment again.

**Initial grace period examples**
Gordon takes out a Perkins Loan in the fall quarter at Sims School of Botany, drops out of school for the winter quarter, and resumes at least half-time study for the spring quarter. Gordon is entitled to a full initial grace period once he again leaves school or drops below half-time status.

Heather takes out several Perkins Loans to attend Flocker University. She attends for four consecutive years, graduates, and begins her initial grace period. During her initial grace period, Heather joins the Peace Corps and requests economic hardship deferment. Flocker University cannot waive Heather's initial grace period and begin the economic hardship deferment. Heather must acknowledge in writing that she is waiving her initial grace period.

If a borrower requests a deferment to begin during the initial grace period, the borrower must waive (in writing) his or her rights to the initial grace period. The request for a deferment alone is not sufficient documentation for a school to waive the initial grace period; the borrower must also acknowledge in writing that he or she wants the waiver. (Deferments are discussed in chapter 5 of this volume.)

For a borrower who is a member of the Armed Forces Reserve, the initial grace period does not include any period up to three years during which the borrower is called or ordered to active duty for more than 30 days, including the period necessary for the borrower to resume enrollment at the next available enrollment period. The period necessary for the borrower to resume enrollment at the next available enrollment period may not exceed 12 months. The borrower must notify you of the beginning and end dates of her service, and the date she resumes enrollment. Borrowers who enroll in a different program when they return from

**Grace period delayed during active duty cite**
34 CFR 674.31(b)(2)(i)(C)

**Initial grace periods for NDSLs and Defense Loans**
Repayment of an NDSL made before October 1, 1980, begins **nine months** after the date that the borrower drops below half-time enrollment. Repayment of an NDSL made on or after October 1, 1980 begins **six months** after the date that the borrower drops below at least half-time enrollment.

**Post-deferment grace period definition cite**
34 CFR 674.2

**Less-than-half-time grace period cite**
34 CFR 674.32

**Less-than-half-time student/no loan grace period example**
Paula starts school full time in September 2002. She does not have an outstanding Perkins Loan or NDSL. In January 2003, Paula drops to one-quarter time. In March 2003, she receives a Perkins Loan. Since Paula dropped below half-time enrollment **before** the Perkins Loan was made, Paula must begin repayment nine months after the date she dropped below half-time enrollment---October 2003.

**Less-than-half-time student/ outstanding loan grace period example**
Jason has been making monthly payments on Perkins Loan #1. He takes out Perkins Loan #2 in September. His next payment on Loan #1 is due October 15. Jason will begin repaying Loan #2 at the same time. **Remember that the repayment status of the outstanding loan determines the repayment status of the second loan.**

| Applicable Grace Periods | Perkins | NDSL on or after 10-1-80 | NDSL before 10-1-80 |
|---|---|---|---|
| *Initial Grace Period* | 9 months | 6 months | 6 months |
| *Post-deferment Period* | 6 months | 6 months | none |

active duty are entitled to the same grace period benefits. A borrower who is in a grace period when called or ordered to active duty is entitled to a new grace period upon conclusion of the excluded period.

## Post-deferment grace periods

A "post-deferment grace period" is the period of six consecutive months that immediately follows the end of a period of deferment and precedes the date on which the borrower must resume repayment on the loan. Neither the deferment nor the grace period is counted as part of the 10-year repayment period.

Except for hardship deferments on loans made before July 1, 1993 (see chapter 5 of this volume for more information), all deferments for all loans made under the Federal Perkins Loan Program have post-deferment grace periods of six consecutive months.

## Initial grace period for less-than-half-time attendance

A borrower who is attending less than half time and who has no outstanding Perkins Loan or National Direct Student Loan (NDSL) must begin repaying a new loan nine months from the date the loan is made or nine months from the date the borrower ceases to be enrolled as a regular student on at least a half-time basis[1], whichever is earlier.

A borrower who is attending less than half time and who has an outstanding Perkins Loan or NDSL must begin repayment on an additional loan when the next scheduled installment of the outstanding loan is due; there is no formal grace period or in-school deferment on the new loan.

## Calculating the grace period

A grace period is always day-specific—an initial grace period begins the day after the day the borrower drops below half-time enrollment. Likewise, a post-deferment grace period begins on the day immediately following the day on which an authorized period of deferment ends.

If a borrower has received loans with different grace periods (and different deferment provisions), the borrower must repay each loan according to the terms of its promissory note; the borrower must pay the minimum monthly payment amount that applies to each loan that is not in a grace or deferment period.

1. This nine-month period includes the date the loan was made.

### Grace Periods for Students Who Don't Return From Leaves of Absence

34 CFR 668.22 (b)(1)
34 CFR 668.22 (c)(1)(v)
34 CFR 668.22 (d)(1)(ix)

Students granted approved leaves of absence retain their in-school status for FSA loans. However, if a student does not return from an approved leave of absence, the student's grace period begins the date the student began the leave of absence. (If the school is required to take attendance, the grace period begins on the last date of academic attendance.)

For a student who does not return from an approved leave of absence, this withdrawal date might result in the exhaustion of some or all of the student's grace period.

Leaves of absence no longer qualify as approved leaves of absence for FSA purposes unless the school explains the effects that the student's failure to return from an approved leave of absence might have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

## PREPAYMENT

If the borrower repays more than the amount due for any repayment period after the initial grace period has ended, the school must use the excess to prepay principal, unless the borrower designates the excess as an advance payment on the next regular installment. If the borrower designates the excess as an advance payment on the next installment and that advance payment exceeds the amount of the next regularly scheduled installment, the school must use the excess to prepay principal.

The borrower may prepay all or part of the loan at any time without penalty. Amounts repaid during the academic year the loan was made and before the initial grace period has ended are not considered prepayments but must be used to reduce the original loan amount.

## INTEREST ACCRUAL

Interest on a Perkins Loan must be computed at the rate of 5% per annum simple interest on the unpaid principal balance. Although interest accrues on a Perkins Loan; *your school may not capitalize it*. This means that your school may not add unpaid interest to the principal balance to increase the principal balance of the Perkins Loan. Instead, your school must track principal and interest as separate figures, adding accrued interest to the interest balance, *not* the principal balance.

### Prepayment cite

34 CFR 674.31(b)(4)

### Payment made during initial grace period example

Shannon applies her yearly birthday check of $400 to her $1,000 Perkins Loan before the initial grace period ends. The principal advanced to Shannon becomes $600. This is not considered a prepayment because payment was made before the end of the initial grace period.

### Simple interest accrual example

Fred has been granted a hardship forbearance for a year. At the beginning of his forbearance period, Fred's loan balance is $1000:

Principal: **$1000**
Interest: **$0**

Interest accrues throughout the forbearance period at a simple rate of 5% per annum. At the end of the year-long forbearance period, Fred's loan balance is $1050:

Principal: **$1000**
Interest: **$50**

When Fred makes his first payment after the end of the forbearance, his payment is applied to interest first, then principal. Fred makes a payment of $25, reducing his balance to $1025:

Principal: **$1000**
Interest: **$25**

Generally, interest is computed from the date a payment is received rather than from the due date. However, there are exceptions. Interest charges may be computed to the nearest first-of-the-month, or they may be computed in accordance with the borrower's established schedule of payments of principal and interest if the borrower is making payments on a regular basis according to that schedule. For example, if a grace period expires in the middle of a month, interest may be computed to the beginning of the next month. Also, if a past-due payment is received before the next regularly scheduled payment, the interest may be computed according to the established payment schedule—no adjustments are necessary.

National Defense Student Loans (Defense Loans), NDSLs, and older Perkins Loans have different interest rates. The interest rate is stated in the borrower's promissory note. The annual interest rate for loans made before July 1, 1981 was 3 percent; between July 1, 1981 and September 30, 1981 was 4 percent; on or after October 1, 1981 is 5 percent.

## ESTABLISHING A REPAYMENT PLAN

**Repayment plan cite**
34 CFR 674.33 (a)

A borrower must repay his or her loan, plus interest, in 10 years. This repayment period never includes authorized periods of deferment, forbearance, or cancellation.

The repayment plan must be established and disclosed to the student before the student ceases to be enrolled at least half time. Please see chapter 7 of this volume for a detailed discussion of repayment information disclosure.

If a borrower wants to repay the loan in graduated installments, he or she must request permission to do so from the school; if the school agrees to this type of repayment, a graduated installment schedule is prepared and submitted to the Department for approval. If the Department approves the school's request, the borrower may use the graduated method of repayment.

**Payment amount cite**
34 CFR 674.33(a)

If a student receives loans from more than one school, the repayment of each loan is made to (or default is attributed to) the school where the student received the loan.

**Calculating payment amount example**
Bernadine received a $2,500 Perkins Loan to attend Jordan College, which requires quarterly payments. To calculate Bernadine's quarterly payment, Jordan College multiplies the original principal by the constant multiplier for a quarterly payment frequency:

$2,500 X .0319214 = $79.80

### *Calculating the payment amount*

Schools may require the borrower to make payments on a monthly, bimonthly, or quarterly basis. Each of the borrower's payments must sufficiently cover the interest accruing between payments to ensure that the loan is repaid in 10 years. Schools calculate the correct payment amount by multiplying the principal by the appropriate constant multiplier (see table). (Schools using the minimum monthly payment plan option, introduced in the next section, may require the borrower to pay a minimum monthly amount of $40 instead.)

## 10-Year Repayment Table of Constant Multipliers

| Annual Rate | Payment Frequency | Payments per Year | Total Payments | Constant Multiplier |
|---|---|---|---|---|
| 5% | Monthly | 12 | 120 | .0106065 |
| 5% | Bimonthly | 6 | 60 | .0212470 |
| 5% | Quarterly | 4 | 40 | .0319214 |

Principal X Constant Multiplier = Payment Amount

If the installment for all loans a school made to a borrower is not a multiple of $5, the school may round the installment payments to the next highest dollar amount that is a multiple of $5.

If the last scheduled payment is $25 or less, the school may combine it with the next-to-last payment.

## MINIMUM MONTHLY REPAYMENT AMOUNTS

Schools may choose to include a minimum monthly repayment requirement in the Perkins Loan promissory note.

The minimum monthly repayment amount is $40, unless the borrower on the date the new loan is made has an outstanding balance on a Perkins Loan, NDSL, or Defense Loan made before October 1, 1992 that included a $30 minimum monthly repayment provision. (See sidebar.)

To determine the minimum repayment for bimonthly and quarterly payment schedules, schools should multiply $40 by 2 (months) and 3 (months) respectively.

### *Conditions for minimum monthly repayment*

A school may require a borrower to pay a minimum monthly payment amount of $40 on a Perkins Loan if:

- the promissory note includes a provision specifying a minimum monthly repayment of $40 and the monthly repayment of principal and interest for a 10-year repayment period (as calculated using a constant multiplier) would be less than $40; or

**Minimum monthly repayment cite**
34 CFR 674.33(b)

**Minimum monthly repayment amount for older loans**
The minimum monthly repayment amount is **$30** for NDSLs, Perkins Loans made before October 1, 1992, and Perkins Loans made after October 1, 1992 to borrowers who have an outstanding balance on a Perkins Loan, NDSL, or Defense Loan made before October 1, 1992 that included a $30 minimum monthly repayment provision. The minimum monthly repayment amount is **$15** for Defense Loans. If a borrower has both Defense and NDSL or Perkins Loan from one or more schools and the total monthly repayment is less than $30 and the monthly repayment on a Defense Loan is less than $15, the amount applied to the Defense Loan may not exceed $15.

### Minimum monthly payment for multiple loans at same school example

Harv has Perkins Loans of $1,500 and $1,000 (for a total debt of $2,500) and has a promissory note that includes the minimum monthly payment provision. Using the constant multiplier table, the total monthly payment on the two loans would be less than $40:

| | |
|---|---|
| **Monthly payment on loan #1** | |
| $1,500 X .0106065 = | $15.91 |
| **+ Monthly payment on loan #2** | |
| $1,000 X .0106065 = | $10.61 |
| **= Total payment per month** | $26.52 |

Because the monthly payment on the two loans is less than $40, Moore University may decide to exercise the minimum $40 payment option. If the school does so, it calculates the monthly payment for each loan by dividing the original principal of the loan by the total original principal of all loans:

| | |
|---|---|
| **Monthly payment on loan #1** | |
| $1,500 ÷ $2,500 = | .600000 |
| | X $40 |
| | $24 |
| **Monthly payment on loan #2** | |
| $1,000 ÷ $2,500 = | .400000 |
| | X $40 |
| | $16 |

| | |
|---|---|
| **Monthly payment on loan #1** | $24 |
| **+ Monthly payment on loan #2** | $16 |
| **= Total payment per month** | $40 |

### Two schools/minimum monthly payment amount example

Jennifer has Perkins Loans from Shady Acres College and Sunnydale University. Shady Acres does not exercise the minimum monthly payment option and receives $25 a month (the amount due under its established 10-year repayment plan). Sunnydale exercises the $40 option and receives $15, the difference between $40 and the amount of principal and interest paid to Shady Acres.

- the borrower has received Perkins Loans with different interest rates at the same school and the total monthly payment would otherwise be less than $40 (provided any of the promissory notes includes the minimum monthly repayment provision).

Under no circumstances may a school require a minimum monthly repayment of more than $40.

## Multiple loans at same school

If a borrower has multiple Perkins Loans from the same school, any of which include the minimum monthly payment provision, the school may require the borrower to make a minimum monthly payment if the borrower's total monthly payment on all the loans totals less than $40.00[2]. If the school exercises this option, the school must divide each monthly payment among all the loans proportionate to the amount of principal advanced under each loan. If the borrower's total monthly payment equals or exceeds $40.00 for all of the loans made at that school, the school may not exercise the minimum monthly payment on any loan.

The school determines the minimum monthly repayment in this manner even if the Perkins Loans have different interest rates.

If the borrower has received Perkins Loans with different grace periods and deferments, the school must treat each note separately. The school still divides the minimum monthly payment proportionately among the loans. However, the borrower must pay each loan's portion when it is due.

## Loans from multiple schools

A borrower may have received Perkins Loans from more than one school. If the total of the monthly payments is at least equal to $40, none of the lending schools may exercise the minimum monthly repayment requirement.

If the total monthly repayment is less than $40, but only one school exercises the minimum monthly payment option, that school receives the difference between $40 and the repayment owed to the second school.

If the total monthly repayment is less than $40 and each school exercises the minimum repayment option, the $40 minimum repayment is divided among the schools in proportion to the total amount of principal each has advanced.

If the borrower owes funds to more than one school that exercises the minimum monthly repayment option, each school should ask the borrower for:

2. A student's monthly payment amount may need to be higher than $40 (or $30), of course, so that his or her debt is repaid by the end of 10 years.

- the names of all other schools to which the borrower owes funds under the Federal Perkins Loan Program;
- the approximate amount borrowed from, and the current indebtedness to, each school; and
- any information that would help identify the loans—for example, the loan number and the dates of loan advances.

Using this information, the schools should contact each other and negotiate the amount each should receive from the borrower.

### *Hardship payment reduction*

A school may reduce a borrower's scheduled payments for up to one year at a time if the borrower is scheduled to pay the $40 minimum monthly payment and the school determines that the borrower is unable to make the scheduled payments due to hardship, such as prolonged illness or unemployment.

## PAYMENT PROCESSING

Any payment a school receives must be applied in the following order:

1. collection costs,
2. late charges (or penalty charges),
3. accrued interest, and
4. principal.

Past-due payments should be applied in the same order as other payments, except that past-due payments must be applied to the "oldest" past-due dollars first.

**Payment processing cite**
34 CFR 674.33(a)

## INCENTIVE REPAYMENT PROGRAM

To encourage repayment, a school may:

- reduce a loan's interest rate by up to 1% if the borrower makes 48 consecutive monthly payments;
- discount by up to 5% the balance a borrower owes on a loan if he or she pays the loan in full before the end of the repayment period; or
- with the Secretary's approval, establish any other repayment incentive options that reduce default and replenish student loan funds.

A school may not use federal funds or school funds from the Perkins Loan revolving fund to absorb the costs associated with repayment incentives. On at least a quarterly basis, schools must reimburse the Perkins Loan Fund for income lost as a result of the discounts offered through the Incentive Repayment Program.

**Incentive repayment program cite**
34 CFR 674.33(f)

## Perkins Loan Quarterly Billing Example (with four standard repayment dates)

| Borrower's Termination Date | Initial 9-Month Grace Period Ends | Installment Due |
|---|---|---|
| January 1 | September 30 | January 1 |
| February 1 | October 31 | January 1 |
| March 1 | November 30 | January 1 |
| April 1 | December 31 | April 1 |
| May 1 | January 31 | April 1 |
| June 1 | February 28 | April 1 |
| July 1 | March 31 | July 1 |
| August 1 | April 30 | July 1 |
| September 1 | May 31 | July 1 |
| October 1 | June 30 | October 1 |
| November 1 | July 31 | October 1 |
| December 1 | August 31 | October 1 |

## ESTABLISHING REPAYMENT DATES

Depending on the repayment schedule (monthly, bimonthly, or quarterly), the borrower's first payment is due one, two, or three months from the date the grace period expires. Repayment schedules must be adjusted (preferably on the first installment) so that the loan will be repaid within the normal 10-year period or as prescribed in the terms of the promissory note.

For convenience, a school may establish standard repayment dates for borrowers who are on quarterly repayment schedules. The first repayment date may be the first day of the calendar quarter after the grace period has expired. Four standard repayment dates would be used: January 1, April 1, July 1, and October 1. (See the chart next page.)

Another type of repayment schedule is a "rolling" quarterly repayment schedule in which each borrower's first payment is due exactly three months after the date his or her grace period expires. For example, if a borrower's first grace period expires on May 17, the first installment payment is due August 18. Another borrower's grace period expires May 18, so the first installment payment on that loan is due August 19.

For collection and bookkeeping purposes, a fixed repayment date is preferred. Otherwise, if the borrower is entitled to a deferment, the school may have problems computing payments due. (See chapter 5 of this volume.) Once the payment date is established, the borrower will owe principal and interest for any portion of a scheduled installment period not covered by a deferment. However, if the borrower is in

## Low-Income Individual Maximum 2001 Income Levels for 2002-2003 Award Year
**(derived from Income Protection Allowances published in the May 31, 2001 *Federal Register*)**

| *Number of Family Members (including student)* | *1* | *2* | *3* | *4* | *5* | *6* |
|---|---|---|---|---|---|---|
| *Maximum 2001 Income Level* | *$9,144* | *$16,513* | *$20,563* | *$25,400* | *$29,975* | *$35,063* |

***NOTE: For families of more than 6, add $3,170 for each additional family member.***

deferment on a due date, any amounts owed are carried over and paid on the first due date on which the borrower is out of deferment.

## EXTENDING THE REPAYMENT PERIOD FOR HARDSHIP AND LOW-INCOME INDIVIDUALS

A school may extend a repayment period if the borrower is experiencing a period of prolonged illness or unemployment or if the borrower is a "low-income individual." A low-income individual is one whose total income for the preceding calendar year does not exceed the maximum income level for his/her family size (see chart). Interest continues to accrue during an extension of a repayment period for any of these reasons.

**Repayment period extension cite**
34 CFR 674.33(c)

**Calculation of maximum incomes for low-income individuals**
34 CFR 674.33(c)(2)

For NDSLs made on or after October 1, 1980 and for all Perkins Loans, a school may extend the borrower's repayment period up to 10 additional years if, during the repayment period, the school determines that the borrower qualifies as a low-income individual. The school must review the borrower's status annually to determine whether he or she still qualifies. Once a borrower no longer qualifies, his or her repayment schedule must be amended so that the number of months in it does not exceed the number of months remaining on the original repayment schedule (not counting the extension period).

There are two other ways that a school may adjust the repayment schedule for a borrower who qualifies as a low-income individual:

- The school may require the borrower to pay a reduced amount for a limited time and then later increase the payment amount so that the borrower catches up on payments. For example, a school reduces the payment amount to $10 per month for six months and then increases it to $50 per month until the borrower catches up. The repayment period does not have to be extended; or
- The school may allow the borrower to pay $10 per month for a year and then resume normal payments. This type of adjustment extends the repayment period.

**Death and disability discharge cite**
34 CFR 674.61

# DISCHARGE DUE TO DEATH OR TOTAL AND PERMANENT DISABILITY

You must discharge the remaining balance of any Perkins Loan, NDSL, or Defense Loan if the borrower dies or becomes totally and permanently disabled. Your school does not receive reimbursement for discharges due to death or disability.

The Department does not approve or supply cancellation forms.

## *Death*

You must base your determination of death of the borrower on an original or certified copy of the death certificate. Previously, you could make a discharge due to death on the basis of a death certificate or other certification recognized by state law.

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.

## *Total and permanent disability*

Total and permanent disability is the inability to work and earn money because of an injury or illness that is expected to continue indefinitely or to result in death. The definition of permanent and total disability no longer requires that the borrower be unable to attend school.

The borrower must submit a physician's certification of total and permanent disability. The physician must certify that the borrower is 100% disabled according to the Perkins Loan Program definition of disability.

The following procedures are effective until July 1, 2002:

If you determine, based on the physician's certification, that the borrower is totally and permanently disabled, you must discharge the loan. Your school may not subsequently require the borrower to repay the loan, even if the borrower's medical condition improves to the point that he or she is no longer disabled, unless you can prove that the claim of disability was fraudulent or the borrower receives another Title IV loan within three years of the date he or she became totally and permanently disabled.

The following procedures become effective on July 1, 2002:

If your school determines, based on certification from the borrower's physician, that the borrower is totally and permanently disabled, your school must assign the account to the Department. You must notify the borrower that you have assigned the account to the Department for determination of eligibility for a total and permanent disability discharge.

If the Department makes an initial determination that the borrower is eligible for discharge, the Department will place the loan in a conditional discharge status for up to three years after the date the borrower became totally and permanently disabled as certified by the borrower's physician. A loan placed in conditional discharge status is not considered past due or in default unless the loan was past due or in default at the time the conditional discharge was granted.

If your school receives payments from a borrower on a loan that is in conditional discharge status, you must forward these payments to the Department and notify the borrower that there is no need to make payments on the loan while it is in conditional discharge status. If the loan is ultimately discharged, the Department will return the payments to the borrower.

## CLOSED SCHOOL DISCHARGE

Your school must assign to Federal Student Aid (FSA) Collections all its outstanding Perkins and NDSL loans if it is closing (see Chapter 8 for assignment procedure).

FSA Collections may discharge a Perkins Loan or NDSL made on or after January 1, 1986 if the borrower is unable to complete his or her program of study due to the closure of the school. FSA Collections must reimburse borrowers for payments made voluntarily or by forced collection.

A borrower whose loan was in default and then discharged under this provision is not considered to have been in default and reestablishes Federal Student Aid (FSA) eligibility, provided he or she meets all other eligibility criteria.

FSA Collections reports the discharge to the credit bureaus to which the previous loan status was reported.

You can find a searchable database of closed schools on-line at **http://www.ed.gov/offices/OSFAP/Students/closedschool/**(click on "Closed School Search Page").

**Closed school discharge cite**
34 CFR 674.33(g)

## BANKRUPTCY DISCHARGE

The basic actions a school must take when a borrower files for bankruptcy protection are covered here, in Dear Colleague Letter GEN-95-40, dated September 1995, and in 34 CFR 674.49. For the best advice on how to proceed when a borrower files for bankruptcy protection, a school should consult its attorney. The school should ensure that the attorney is aware of the due diligence provisions that apply to school actions.

**Bankruptcy laws**
11 U.S.C. 1307, 1325, and 1328(b) are laws applicable to bankruptcy cases in general, not just to Perkins Loan bankruptcy cases. 11 U.S.C. 1307 concerns the dismissal of a Chapter 13 case or the conversion of a case filed under Chapter 13 to a Chapter 7 proceeding. 11 U.S.C. 1325 concerns the confirmation by the court of a borrower's proposed repayment plan. 11 U.S.C. 1328(b) allows a debtor who fails to complete the payments required under the plan to obtain a discharge if conditions are met. A school should consult an attorney for the best advice in bankruptcy cases.

If a school receives notice that a borrower has filed for bankruptcy protection, it must immediately stop collection efforts (outside the bankruptcy proceeding itself). If the borrower has filed under Chapter 12 or 13 of the Bankruptcy Code, the school must also suspend collection efforts against any endorser.

The school must file a proof of claim in the bankruptcy proceeding unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states the borrower has no assets.

Effective for bankruptcies filed on or after October 8, 1998, a borrower who receives a general discharge in bankruptcy does not by that order obtain a discharge of a loan that has been in repayment for seven years or more at the time of the bankruptcy filing. For these bankruptcies, a student loan is discharged by a general discharge order only if the borrower also obtains a court ruling that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

## *Responding to complaint for determination of dischargeability*

Customarily, a borrower obtains a judicial ruling of undue hardship by filing an adversary proceeding—a lawsuit within the bankruptcy proceeding—in the bankruptcy court seeking to prove undue hardship. If a borrower files an adversary proceeding to prove undue hardship under 11 U.S.C. 523(a)(8), the school must decide, on the basis of reasonably available information, whether repayment under the current repayment schedule or under any adjusted schedule would impose undue hardship on the borrower and his or her dependents.

If the school concludes that repayment would not impose an undue hardship, the school must then decide whether the expected costs of opposing the discharge would exceed one-third of the total amount owed on the loan (principal, interest, late charges, and collection costs). If the expected costs do not exceed one-third of the total amount owed on the loan, the school must oppose the discharge and, if the borrower is in default, seek a judgment for the amount owed. If necessary, the school may compromise a portion of that amount to obtain a judgment.

If the school opposes a request for determination of dischargeability on the ground of undue hardship, a school may also file a complaint with the court to obtain a determination that the loan is not dischargeable and to obtain a judgment on the loan.

Schools that are State instrumentalities may, as an alternative, oppose an undue hardship claim by asserting their immunity from suit in bankruptcy. As with any other action in defending student loans in bankruptcy, the school should consult with counsel, and should ensure that counsel is fully informed about recent changes in Department regulations to support this position.

## *Procedures for responding to proposed Chapter 13 repayment plan*

Under Chapter 13, the borrower may generally obtain an adjustment in repayment terms of all of his/her debts. The borrower proposes a repayment plan that addresses whether and how each debt or class of debts will be paid. If the court approves the plan, creditors are bound to the terms of that plan for duration of the plan, typically three to five years. If the borrower's repayment plan proposes full repayment of the Perkins Loan, including all principal, interest, late charges, and collection costs on the loan, no response from the school is required. The school is also not required to respond to a proposed repayment plan that does not include any provision in regard to the Perkins Loan obligation or to general unsecured claims.

If the borrower proposes to repay less than the total amount owed and that the remainder be discharged, the school must determine, from its own records and court documents, the amount of the loan dischargeable under the plan. The school does this by subtracting the total proposed payments from the total amount owed. The school must also determine from its own records and court documents whether the borrower's proposed repayment plan meets the requirements of 11 U.S.C. 1325. Two of those requirements are particularly relevant:

- First, the amount to be paid under the plan must at least equal the amount the school would receive if the debtor had filed under Chapter 7 rather than under Chapter 13.
- Second, to pay creditors under the plan, the debtor must use all income not needed to support himself or herself and his or her dependents.

If the borrower's proposed repayment plan does not meet the requirements of 11 U.S.C. 1325, the school must object to the confirmation by the court of the proposed plan, unless the cost of this action will exceed one-third of the dischargeable loan debt; if the cost will exceed one-third of the dischargeable debt, the school is not required to take this action.

Also, when a borrower proposes to repay less than the total amount owed, the school must determine whether grounds exist under 11 U.S.C. 1307 for the school to move to have the Chapter 13 case either dismissed or converted to a Chapter 7 proceeding. Such grounds include a borrower's failure to (1) begin payments under the plan within the required time (usually 30 days from the date the plan is filed), (2) file a proposed plan in a timely manner, or (3) pay required court fees and charges. If the school determines that such grounds do exist, the school must move to dismiss or convert the Chapter 13 case to a Chapter 7 proceeding, unless the cost of this action will exceed one-third of the dischargeable loan debt.

After a borrower's proposed repayment plan is confirmed by the court, the school must monitor the borrower's compliance with the repayment plan. If the school determines from its own records or court documents that the borrower either has not made the payments required under the plan or has filed for a hardship discharge under 11 U.S.C. 1328(b), the school must determine whether grounds exist under 11 U.S.C. 1307 to dismiss the case filed under Chapter 13 or to convert the Chapter 13 case to a Chapter 7 proceeding or whether the borrower is entitled to a hardship discharge. If grounds do exist under 11 U.S.C. 1307 to dismiss or convert a Chapter 13 case, the school must move to convert or dismiss the case. If a borrower has not demonstrated entitlement to a hardship discharge under 11 U.S.C. 1328(b), the school must oppose the hardship discharge request, unless the costs of these actions, when added to those already incurred, would exceed one-third of the dischargeable debt.

## *Resuming/terminating billing and collection*

A school must resume billing and collection procedures after the borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, 11 U.S.C. 1228, 11 U.S.C. 1328(a), or U.S.C. 1328(b) unless the court has found that repayment would impose an undue hardship. If the court has found that repayment would impose an undue hardship, the school must terminate all collection action and write off the loan. If a school receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Perkins Loan Fund.

## *Bankruptcies filed before October 8, 1998*

For bankruptcies filed before October 8, 1998, loans in repayment more than seven years by the date of the bankruptcy filing may be discharged by a general discharge order. The school may therefore not resume collection after the borrower has received a discharge if the loan entered repayment more than seven years before the filing of the petition and either of the following conditions apply: (1) the discharge was obtained in a chapter 13 proceeding in which the plan provided for the debt specifically or for unsecured debts in general; or (2) the discharge was obtained in any other bankruptcy proceeding, and the debt was not excepted from discharge by a provision of the Code other than 11 USC 523(a)(8).

If these conditions are met, the school must terminate all collection action and write off the loan.

If the conditions above are met and the borrower additionally files an adversary proceeding for discharge of a loan on the ground of undue hardship under 11 U.S.C. 523(a)(8), the school still may not oppose a determination of dischargeability.

## *Bankruptcy and student eligibility*

As stated earlier, a borrower is no longer required to establish eligibility for a new student loan by agreeing to repay a loan discharged in bankruptcy. Section 525(c) of the Bankruptcy Code provides that a student may not be denied student financial assistance solely on the basis of a bankruptcy filing or failure to pay a debt dischargeable in bankruptcy. If a student has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been determined by a court of law to be dischargeable in bankruptcy, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of a future loan from the Federal Perkins Loan Program or other student loan programs. However, schools may continue to consider the student's post-bankruptcy credit history in determining willingness to repay the loan.

# Forbearance & Deferment

CHAPTER 5

*The Federal Perkins Loan Program offers borrowers a variety of forbearance and deferment options. These options **do not** allow for capitalization of interest at the end of any forbearance or deferment period.*

## FORBEARANCE

**Forbearance cite**
34 CFR 674.33(d)

Forbearance is usually a temporary postponement of payments. The borrower may alternatively request an extension of time allowed for making payments or the acceptance of smaller payments than were previously scheduled. Unlike deferment, interest continues to accrue during any period of forbearance. The borrower may request to pay interest as it accrues during periods of forbearance, but the school *may not* require the borrower to do so.

Schools may grant forbearance to borrowers who are experiencing financial hardship, poor health, or for other acceptable reasons. For example, the Department strongly encourages schools to grant periods of forbearance to borrowers who are serving in AmeriCorps. Also, the Department may authorize periods of forbearance due to national military mobilization or other national emergency.

Borrowers must request forbearance in writing, providing supporting documentation of the reason for forbearance. Both the borrower and the school must agree upon the terms of the forbearance.

Schools may grant the borrower forbearance for a period of up to one year at a time. The forbearance may be renewed, but the periods of forbearance collectively may not exceed a total of three years. A school may apply an authorized period of forbearance to begin retroactively (that is, to begin on an earlier date than the date of the borrower's request) if the borrower requests that the school do so and if he or she provides adequate documentation to support the request.

Schools may not include periods of forbearance in determining the 10-year repayment period.

Forbearance is available for all loans made under the Federal Perkins Loan Program, regardless of when they were made.

### *Hardship*

A school must grant forbearance if the total amount the borrower is obligated to pay monthly on all Federal Student Aid (FSA) loans is equal to or greater than 20% of the borrower's total monthly gross income. Total monthly gross income is the gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

To receive forbearance for hardship, the borrower must submit at least the following documentation:

- evidence of the amount of the borrower's most recent total monthly gross income; and
- evidence of the amount of the monthly payments the borrower owes for the most recent month on his or her FSA loans.

If the borrower's loan payments are due less frequently than monthly, a proportional share of the payments is used to determine the equivalent in total monthly payments. For example, if a payment is due quarterly, divide the amount by three (because the payment covers three months) to determine the equivalent monthly payment amount.

## DEFERMENT

**Deferment procedures cite**
34 CFR 674.38(a)

Under certain circumstances, a borrower is entitled to have the repayment of a loan deferred. During deferment, the borrower is not required to pay loan principal and interest does not accrue. After each deferment, the borrower is entitled to a post-deferment grace period of six consecutive months.

Borrowers are no longer required to request deferments in writing. However, a borrower who requests deferment must provide the school with all the information and documents the school requires by the school's deadline. (The Department does **not** approve or supply deferment forms.) Borrowers must immediately report any change in their deferment status to lending schools.

**Concurrent deferment cites**
34 CFR 674.34(c)
34 CFR 674.52(d)

The borrower must request deferment *unless* the borrower is engaged in service for which a borrower may qualify for loan cancellation. (See the discussion of "Concurrent Deferment" later in this chapter.)

If a borrower is currently in deferment, the school must reaffirm continued eligibility for deferment on at least an annual basis. However, if the borrower is currently in economic hardship deferment for service in the Peace Corps, the school must grant deferment for the full term of the borrower's service, not to exceed three years or for the remaining period of economic hardship deferment eligibility, if it is less than the remaining period of service.

Schools may not include periods of deferment in the 10-year repayment period.

The deferments that follow are available to all loans made under the Federal Perkins Loan Program, regardless of disbursement date or contrary provisions in the promissory note.

## In-school

A borrower may defer repayment of a Perkins Loan if he or she is enrolled at least half time in an eligible school.

To receive an in-school deferment, the borrower must be enrolled as a regular student in an eligible institution of higher education or a comparable institution outside the United States approved by the Department for deferment purposes. A regular student is one who is enrolled for the purpose of obtaining a degree or certificate. (The eligible institution need not participate in the Federal Perkins Loan Program.)

If the borrower is attending at least half time as a regular student for a full academic year and intends to do so in the next academic year, he or she is entitled to a deferment for **12 months**. This means that a school must continue to apply the in-school deferment through the summer session, even if the borrower does not attend classes during the summer session. In-school deferment ends on the day the borrower graduates or drops below half-time enrollment.

Schools may grant in-school deferments to borrowers based on student enrollment information provided by third-party servicers or other schools. The enrollment information must establish that the borrower is enrolled as a regular student on at least a half-time basis. If a school grants deferment based on this information, the school must notify the borrower of the deferment and offer the option to cancel deferment and continue repayment of the loan.

If a borrower is attending a school that ceases to qualify as an institution of higher education, the borrower's deferment ends on the date the school ceases to qualify.

Except for a program in dentistry, an in-school deferment may not be granted to a borrower who is serving in a medical internship or residency program.

## Graduate fellowship

A borrower may defer repayment if he or she is enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Department, including graduate or postgraduate fellowship-supported study (such as a Fulbright grant) outside the United States.

To receive deferment for enrollment in a graduate fellowship program, the borrower must provide certification that he or she is engaged in full-time study in an approved graduate fellowship program (or has been accepted by the program).

**In-school deferment cite**
34 CFR 674.34(b)(1)(i)

**Enrollment verification cite**
34 CFR 674.38(a)(2)

**Graduate fellowship and rehabilitation training deferments cites**
34 CFR 674.34(b)(1)(ii)
34 CFR 674.34(b)(1)(iii)
34 CFR 674.34(b)(1)(iv)

**Approval for graduate fellowship and rehabilitation training programs**
The Department bases its approval of graduate fellowship and rehabilitation training programs on the requirements for the Federal Family Education Loan Program— see 34 CFR 682.210(d) and 34 CFR 682.210(e).

## Rehabilitation training

A borrower may defer repayment if he or she is enrolled in a course of study that is part of a Department-approved rehabilitation training program for disabled individuals.

To receive this deferment, the borrower must provide the school with certification that:

- the borrower is receiving, or scheduled to receive, rehabilitation training from the agency;
- the agency is licensed, approved, certified, or otherwise recognized by a State agency responsible for programs in vocational rehabilitation, drug abuse treatment, mental health services, or alcohol abuse treatment; or by the Department of Veterans Affairs; and
- the agency provides or will provide the borrower rehabilitation services under a written plan that (1) is individualized to meet the borrower's needs; (2) specifies the date that services will end; (3) is structured in a way that requires substantial commitment from the borrower.

A substantial commitment from the borrower is a commitment of time and effort that would normally prevent the borrower from holding a full-time job either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

## Seeking full-time employment

**Seeking employment deferment cite**
34 CFR 674.34(d)

A borrower may defer repayment on a Perkins Loan for up to three years, regardless of disbursement date and contrary provisions on the promissory note, if the borrower is seeking and unable to find full-time employment.

## Economic hardship

**Economic hardship deferment cite**
34 CFR 674.34(e)

A borrower is entitled to an economic hardship deferment for periods of up to one year at a time, not to exceed three years cumulatively, if the borrower provides the school with satisfactory documentation showing that he or she is within any of the following categories:

1. has been granted an economic hardship deferment for either a Stafford or PLUS Loan for the same period of time for which the Perkins Loan deferment has been requested;
2. is receiving federal or state public assistance, such as Temporary Assistance to Needy Families (formerly, Aid to Families with Dependent Children), Supplemental Security Income, Food Stamps, or state general public assistance;

3. is working full time and is earning a total monthly gross income that does not exceed **$995.00** ($1244.17 for Alaska, $1145.00 for Hawaii). *(Please see boxed elements for further explanation of this figure.)
4. is not receiving total monthly gross income that is more than twice the amount in (3) above and that income minus an amount equal to the borrower's monthly payments on federal postsecondary education loans does not exceed the amount specified in (3) above;

## ECONOMIC HARDSHIP DEFERMENT: DETERMINING THE MAXIMUM MONTHLY GROSS INCOME

To qualify for an economic hardship deferment, the borrower's monthly gross income must not exceed the greater of:

the monthly gross income of a minimum wage earner;

OR

the monthly gross income of a family of two at 100% of the poverty line.

**Monthly Gross Income of Minimum Wage Earner**

The current minimum wage is available at **http://www.dol.gov/dol/asp/public/programs/handbook/minwage.htm**.

$$\text{Monthly Gross Income} = \text{Minimum Wage X } \frac{\text{(40hrsX(52wks/yr)}}{\text{(12mos/yr)}}$$

As of September 1, 1997, the minimum wage is $5.15, making the current monthly gross income of a minimum wage earner **$892.66**.

**Monthly Gross Income of a Family of Two at 100% of the Poverty Line**

Annual poverty line guidelines, as defined by Section 673(2) of the Community Service Block Grant Act, are available at **http://aspe.hhs.gov/poverty/poverty.htm**.

$$\text{Monthly Gross Income} = \frac{\text{Annual Poverty Line (yearly)}}{\text{12mos/yr}}$$

For 2002, the monthly gross income for a family of two at the poverty line is:

All states and the District of Columbia (except Alaska and Hawaii)....$ 995.00

Alaska....$1244.17

Hawaii....$1145.00

5. is working full time and has a federal educational debt burden that is 20% or more of the borrower's total monthly gross income and the borrower's total monthly gross income minus such burden is less than 220% of the amount specified in (3) above; or
6. is serving as a volunteer in the Peace Corps.

For purposes of qualifying under option 3 or 5 of the economic hardship deferment, a borrower is considered to be working full-time if he or she is expected to be employed for at least three consecutive months for at least 30 hours per week.

To qualify for a **subsequent** period of deferment that begins less than one year after the end of the deferment described in option 3 or 4 above, the borrower must submit a copy of his or her federal income tax return if the borrower filed a tax return within the eight months preceding the date the deferment is requested.

To receive an initial economic hardship deferment based on option 4 above, the borrower must submit at least the following documentation:

- evidence showing the amount of the borrower's most recent total monthly gross income from all sources—that is, the gross amount of income the borrower received from employment (either full-time or part-time) and from other sources, and
- evidence showing the most recent monthly amount due on each of the borrower's federal postsecondary education loans, as determined by the method described below.

To determine the monthly amount due on federal postsecondary education loans, the school must count only the monthly amount that the borrower **would have owed** on each loan **if it had been scheduled to be repaid in 10 years** from the date the loan entered repayment; the school should disregard the actual repayment schedule or the actual monthly payment amount (if any) that the borrower would owe during the period for which the economic hardship deferment is requested.

Schools may grant deferments for Peace Corps service for periods longer than one year at a time, but these periods must not collectively exceed three years.

## *Concurrent deferment*

**Concurrent deferment cites**
34 CFR 674.34(c)
34 CFR 674.52(d)

Schools must automatically defer loans during periods when the borrower is performing service that will qualify him or her for loan cancellation. (See chapter 6 of this volume for more information on service cancellations.) Borrowers do not need to apply for concurrent deferment. Schools may grant concurrent deferment for up to 12 months at a time. Concurrent deferment is available to all loans made under the Federal Perkins Loan Program, regardless of disbursement date and contrary provisions on the promissory note.

A borrower who receives concurrent deferment is also entitled to a post-deferment grace period of six consecutive months. Therefore, regardless of the length of time that the eligible service is performed, repayment is deferred during that period of service and does not resume until six months after the cessation of service.

Schools exercising the minimum monthly payment provision listed in the promissory note must cease doing so and grant a deferment to cover any period of qualifying service. The amount to be deferred and subsequently canceled must be calculated using the 10-year repayment period.

Prior to October 7, 1998, a borrower of a Perkins Loan, National Direct Student Loan (NDSL), or National Defense Student Loan (Defense Loan) made before July 1, 1993 could **not** receive a deferment during a period while he or she was performing a service that would subsequently qualify him or her for cancellation of all or a portion of the loan; rather, he or she could qualify for loan **postponement**. For information on postponement, see Chapter 6 of the *Federal Student Financial Aid Handbook, 1998-99*.

## HARDSHIP DEFERMENT FOR LOANS MADE BEFORE JULY 1, 1993

Loans disbursed before July 1, 1993 are eligible for an additional type of hardship deferment, which is **separate and different** from an **economic** hardship deferment.

**Hardship deferments cites**
34 CFR 674.35(g)
34 CFR 674.36(e)
34 CFR 674.37(e)

A borrower may defer repayment for hardship, as determined by the school (for example, if the borrower is facing a prolonged period of illness or unemployment.) A borrower may qualify for *unlimited* deferments due to hardship.

Interest will continue to accrue during the hardship deferment.

Also, hardship deferments **do not** have post-deferment grace periods.

## DEFERMENT EXCLUSIVE TO PERKINS LOANS MADE BEFORE JULY 1, 1993, AND NDSLs MADE BETWEEN OCTOBER 1, 1980 AND JULY 1, 1993

The deferments in this section are only available for Perkins Loans made before July 1, 1993, and NDSLs made between October 1, 1980 and July 1, 1993. See the subsections following this list for more details on these deferments and for information on additional deferments.

**Exclusive deferments list cites**
34 CFR 674.35(c)
34 CFR 674.36(c)

A borrower may defer repayment for up to three years and interest will not accrue while he or she is:

- a member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard;
- a member of the National Guard or the Reserves serving a period of full-time active duty in the armed forces;
- an officer in the Commissioned Corps of the U.S. Public Health Service;
- **(for Perkins Loans made before July 1, 1993 only)** on full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;
- a Peace Corps or ACTION (under Title I, Part A of the Domestic Volunteer Service Act of 1973) volunteer **or** comparable service (see below);
- a volunteer under Title I, Part A of the Domestic Volunteer Service Act of 1973 (ACTION programs);
- temporarily totally disabled or unable to work because he or she must care for a **spouse or other dependent** who is so disabled;
- **(for Perkins Loans made before July 1, 1993 only)** a working mother (up to 12 months deferment); and
- **(for Perkins Loans made before July 1, 1993 only)** a new parent (up to six (6) months deferment).

## *Service comparable to Peace Corps/ACTION volunteer*

**Peace corps/ACTION deferment cites**
34 CFR 674.35(c)(5)
34 CFR 674.36(c)(4)

A borrower is considered to be providing service comparable to Peace Corps or ACTION service if he or she meets **all** of the following five criteria:

1. The borrower serves in an organization that is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954;
2. The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;
3. The borrower does not receive compensation that exceeds the rate prescribed under Section 6 of the Fair Labor Standards Act of 1938 (the federal minimum wage), except that the tax-exempt organization may provide the volunteer with health, retirement, and other fringe benefits that are substantially equivalent to the benefits offered to other employees of the organization;
4. The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fund-raising to support religious activities; and
5. The borrower has agreed to serve on a full-time basis for a term of at least one year.

## Temporary total disability deferment

An affidavit from a qualified physician[1] is required to prove disability. A borrower is temporarily totally disabled if he or she is, due to illness or injury, unable to attend an eligible school or to be gainfully employed during a reasonable period of recovery.

A borrower may receive deferment for temporary total disability of a spouse or dependent if the spouse or dependent requires continuous nursing or other services from the borrower for a period of at least three months due to illness or injury.

The definition of dependent for temporary total disability deferment purposes is the same as the definition used in the *Free Application for Federal Student Aid* (FAFSA) for a member of the independent applicant's household: A borrower's dependent is a child who receives more than half of his or her financial support from the borrower or another person who lives with the borrower and who receives more than half of his or her financial support from the borrower.

**Temporary total disability deferment cites**
34 CFR 674.35(c)(6)
34 CFR 674.36(c)(5)

## Internship/residency deferment

A borrower who is serving in a medical internship or residency program is not considered to be in school for deferment purposes and may not receive an in-school deferment on that Perkins Loan for the internship or residency program; however, the borrower is eligible for an **internship deferment** for up to two years.

While the borrower is serving an eligible internship, he or she may defer repayment for up to two years. Interest will not accrue during the internship deferment. An eligible internship is one that requires the borrower to hold at least a bachelor's degree before beginning the program.

The internship must also be *required by a state licensing agency* as a prerequisite for certification of the individual for professional practice or service. The borrower must provide the school certification from an official of the appropriate state licensing agency indicating that the successful completion of the internship is required by the state licensing agency as a prerequisite for certification for professional practice or service. The borrower must further provide a statement from the organization where the borrower will be an intern certifying:

- that applicants must hold a bachelor's degree to be admitted into the internship program;
- that the borrower has been accepted into the internship program; and
- the dates when the borrower is expected to begin and complete the program.

**Internship deferment cites**
34 CFR 674.35(d)
34 CFR 674.36(d)

1. A qualified physician is a doctor of medicine or osteopathy who is legally authorized to practice medicine.

Borrowers of Perkins Loans made before July 1, 1993 may alternatively show that the internship or residency program *leads to a degree or certificate* awarded by an institution of higher education, a hospital, or a health care facility offering postgraduate training. The borrower must provide the school with a statement from an authorized official of the internship program certifying that:

- an individual must have a bachelor's degree to be admitted into the program;
- the borrower has been accepted into the program; and
- the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

### *Parenting deferments*

These deferments are **only available to borrowers of Perkins Loan made before July 1, 1993**.

A borrower may defer repayment (and interest will not accrue) during a period of up to one year if the borrower is a mother of a preschool-age child, provided the mother is going to work (or going back to work) at a salary that is no more than $1.00 above the minimum hourly wage.

A borrower may also defer repayment for up to six months if the borrower is pregnant, or if he or she is taking care of a newborn or newly adopted child. This deferment is called a parental leave deferment. The borrower must be unemployed and not attending school and must apply for deferment within six months of leaving school or dropping below half-time status.

## DEFERMENTS EXCLUSIVE TO LOANS MADE BEFORE OCTOBER 1, 1980

For information on deferment provisions exclusive to loans made before October 1, 1980, see the *1994-95 Federal Student Financial Aid Handbook* or 34 CFR 674.37.

## DEFERMENT AND DEFAULT

**Deferment and default cite**
34 CFR 674.38(b)

A borrower is not entitled to a deferment on a defaulted loan. If the borrower signs a new repayment agreement, however, a school may grant a deferment even if the school has accelerated[2] the loan. The school would have to de-accelerate the loan before granting the deferment. The policy permitting deferments on defaulted loans applies to all requests for deferment received after February 3, 1988, regardless of the date the loan was made.

2. Acceleration is one of the penalties a school may impose on a defaulted loan. A loan that has been accelerated becomes due and payable immediately in one lump sum.

The borrower must file for deferment by a deadline that the school establishes and provide satisfactory documentation that he or she qualifies for the deferment.

Before granting a deferment on a defaulted loan, the school may require the borrower to pay immediately late fees, collection costs, and some or all of the amount past due as of the date on which the school determined that the borrower had demonstrated eligibility for a deferment. The Department encourages schools to require the borrower to do so, thus "curing" the default.

**A school is not required to grant deferments on loans in default.** However, if a school does so, it is expected to calculate past-due accrued interest. If a school believes this is too burdensome, it may deny deferments on defaulted loans.

## DEFERMENT VS. IN-SCHOOL ENROLLMENT STATUS

Sometimes the borrower transfers to another school—successfully maintaining at-least-half-time enrollment and therefore maintaining in-school status—but the borrower does not notify the school that he or she has transferred until after the initial grace period expires. In this situation, the borrower often requests deferment when he or she is actually entitled to continuation of his or her in-school status.

**In-school status cite**
34 CFR 674.38(c)

In such cases, the borrower may submit proof at any time—even after a loan has been accelerated—that he or she reenrolled at least half time before the initial grace period expired. Upon receipt of this proof, **the school must recalculate the first date of repayment**. The school must also deduct from the loan balance any interest accrued and any late charges added before the date the repayment period actually should have begun. The borrower is entitled to a full initial grace period when he or she ceases half-time enrollment in the new program.

Note that the borrower remains responsible for payments that would have been due under the recalculated repayment period and that the school is not obligated to grant a deferment for any payments past due under that period.

# Cancellation

CHAPTER 6

*A borrower may have all or part of his or her loan (including interest) canceled for engaging in teaching, public service, service in the Peace Corps or ACTION, or service in the military. Definitions that apply to cancellation terms (in bold) are discussed at the end of this chapter. See chapter 4 for a discussion of discharges for death, disability and bankruptcy.*

## TEACHING AND OTHER SERVICE CANCELLATIONS

The Higher Education Act was amended to extend all service cancellations to all borrowers who were previously ineligible as of October 7, 1998. However, only periods of qualifying service performed on or after October 7, 1998, are eligible for cancellation benefits if the borrower was not previously eligible due to the date the loan was made.

**Cancellations for Defense Loans**
Borrowers of Defense Loans are eligible for additional teaching cancellations. See 34 CFR 674.55.

## CANCELLATION PROCEDURES

Schools determine, based on the borrower's documentation, whether the borrower is entitled to have any portion of his or her loans canceled. This responsibility cannot be delegated.

**Cancellation procedures cite**
34 CFR 674.52

The following procedures apply to any loan under this program:

### *Application*

The borrower applies for cancellation of his or her loan by obtaining the appropriate cancellation form from the business or student loan office of the school that made the loan (or from the school's billing service if it uses one). The borrower submits the form to the school, along with any supporting documentation the school requests, by the deadline the school establishes. The Department does not approve or supply cancellation forms. For information on documentation, see the appropriate cancellation category in this section.

For teacher cancellations, the cancellation form the borrower files must be signed by an official in the school system or agency to certify the borrower's service.

### Cancellation rates

With the exception of cancellations for Head Start, military, and volunteer service, the cancellation rate per completed academic year of full-time teaching or for each year of otherwise qualifying full-time service is:

- 15% of the original principal loan amount—plus the interest that accrued during the year—for each of the first and second years;
- 20% of the original principal loan amount—plus the interest that accrued during the year—for each of the third and fourth years; and
- 30% of the original principal loan amount—plus any interest that accrued during the year—for the fifth year.

For cancellation rates for Head Start, military, and volunteer service, please see the corresponding sections in this chapter.

### Concurrent deferment

Schools must automatically defer loans during periods of service for which schools also grant loan cancellation.  Borrowers do not need to apply for these automatic deferments. (See chapter 4 of this volume for more information on concurrent deferment.)

### Payment refund

**Payment refund cite**
34 CFR 674.62(b)

Schools may not refund payments made during a period for which the borrower qualified for a cancellation, unless the borrower made the payment because of the school's error. To reduce the chance of error, a school should keep the borrower informed of any new cancellation benefits.

## CANCELLATION RESTRICTIONS

### Prior service

**Prior service cite**
34 CFR 674.62(a)

Schools may not cancel any portion of a loan for services the borrower performed either before the date the loan was disbursed or during the enrollment period covered by the loan.

### Defaulted loans

**Defaulted loans cite**
34 CFR 674.52(c)

A school may cancel a defaulted loan if the only reason for the default was the borrower's failure to file a cancellation request on time.

If the loan has already been **accelerated**, only eligible service performed **prior** to the date of acceleration can be considered for cancellation. A borrower is not entitled to cancellation for any eligible service performed **after** the date of acceleration.

## *National and Community Service Act of 1990*

**National community service cite**
34 CFR 674.52(e)

Schools may not grant cancellation of a Perkins Loan or National Direct Student Loan (NDSL) to a borrower who has received an education benefit under Subtitle D of Title I of the National and Community Service Act of 1990.

# TEACHER CANCELLATION

**Teacher cancellation cite**
34 CFR 674.53

Schools may cancel up to 100% of a Perkins Loan if the borrower has served full time in a **public or nonprofit elementary or secondary school system** as a:

- teacher in a school serving students from low-income families;
- **special-education** teacher, including teachers of **infants, toddlers, children, or youth with disabilities**; or
- teacher in the fields of **mathematics, science, foreign languages, or bilingual education** or in any other **field of expertise** that is determined by a state education agency to have a shortage of qualified teachers in that state.

Eligibility for teacher cancellation is based on the duties presented in an official position description, not on the position title. To receive a cancellation, the borrower must be **directly employed** by the school system. There is no provision for canceling Perkins Loans or NDSLs for teaching in postsecondary schools.

## *Who is a teacher?*

**Teacher definition cite**
34 CFR 674.51(q)

A teacher is a person who provides students direct classroom teaching, classroom-type teaching in a non-classroom setting, or educational services directly related to classroom teaching (e.g., school librarian, guidance counselor.)

It is not necessary for a teacher to be certified or licensed to receive cancellation benefits. However, the employing school must consider the borrower to be a full-time professional for the purposes of salary, tenure, retirement benefits, and so on. In other words, to qualify, the borrower should accrue the same benefits as teachers who are licensed and/or certified.

A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

Under certain conditions, a teacher's aide may be considered eligible for teacher cancellation. The teacher's aide must meet the definition of a "full-time teacher." He or she must have a bachelor's degree and be a professional recognized by the state as a full-time employee rendering direct and personal services in carrying out the instructional program of an elementary or secondary school.

## Service Cancellations

### Teaching Cancellations

Schools may cancel up to 100% of a Perkins Loan if the borrower has served full time in a public or nonprofit elementary or secondary school system as a:

- teacher in a school serving students from low-income families;
- **special-education** teacher, including teachers of **infants, toddlers, children, or youth with disabilities**; or
- teacher in the fields of **mathematics, science, foreign languages, or bilingual education** or in any other **field of expertise** that is determined by a state education agency to have a shortage of qualified teachers in that state.

### Other Service Cancellations

Schools may cancel up to 100% of a Perkins Loan if the borrower has served full time as a/an:

- **nurse** or **medical technician** providing health care services;
- employee of an eligible public or private nonprofit child or family service agency who is providing or supervising the provision of services to both **high-risk children** who are from **low-income communities** and the families of such children;
- **qualified professional provider of early intervention services** in a public or other nonprofit program under public supervision;
- staff member in the educational part of a preschool program carried out under the Head Start Act; or
- qualifying law enforcement or corrections officer.

Schools may cancel up to 50% of a Perkins Loan if the borrower has served a period of full-time active duty in the armed forces (that is, the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard), the National Guard, or the Reserves. The service must be in an **area of hostilities** or an **area of imminent danger** that qualifies for special pay under Section 310 of Title 37 of the U.S. Code.

Schools may cancel up to 70% of a Perkins Loan if the borrower has served as a Peace Corps or ACTION (under Title I, Part A of the Domestic Volunteer Service Act of 1973) volunteer.

Volunteer teachers are not professionally employed on a full-time basis and, therefore, are not eligible for teacher cancellation benefits.

If the borrower teaches both children and adults, the majority of students must be children for the borrower to qualify for cancellation.

**Teaching both children and adults cite**
34 CFR 674.53(f)

## What qualifies as teaching full time for a full academic year?

The borrower must teach full time for a full academic year or its equivalent. There is no requirement that a teacher must teach a given number of hours a day to qualify as a full-time teacher; the employing school is responsible for determining whether or not the individual is considered to be a full-time teacher.

An "academic year or its equivalent" for teacher cancellation purposes is defined as one complete school year or two half years that are:

**Academic year definition cite**
34 CFR 674.51(a)

- from different school years, excluding summer sessions,
- complete,
- consecutive, and
- generally fall within a 12-month period.

A borrower who cannot complete the academic year because of illness or pregnancy may still qualify for cancellation if he or she has completed the first half of the academic year and has begun teaching the second half, but the borrower's employer must consider the borrower to have fulfilled his or her contract for the academic year.

**Incomplete year due to illness or pregnancy cite**
34 CFR 674.52(b)(2)

## What if the borrower teaches part time at multiple schools?

Schools must grant cancellation to a borrower who is simultaneously teaching part time in two or more schools *if* an official at one of the schools where the borrower taught certifies that the borrower taught full time for a full academic year. For example:

**Teaching in multiple schools simultaneously cite**
34 CFR 674.52(b)(1)(i)

- under a consortium agreement, a borrower may be employed by the consortium and teach at member schools;
- two or more schools, by mutual agreement, could arrange to have one school employ the borrower on a full-time basis and then hire out his or her services to the other school(s) involved in the agreement; or
- a borrower can be considered to have been a full-time teacher for an academic year if he or she can obtain appropriate certifications that he or she has taught in two half-time teaching positions for a complete academic year in two elementary or secondary schools or in two secondary schools.

A school may refuse cancellation for simultaneous teaching in two or more schools if it cannot easily determine that the teaching was full time.

### *What if the borrower teaches in a private school?*

A borrower may receive teacher cancellation for services performed in a private academy if the private academy has established its nonprofit status with the Internal Revenue Service (IRS) and if the academy is providing elementary and/or secondary education according to State law.

A private elementary and/or secondary school does not necessarily need to be accredited for a borrower teaching there to qualify for teacher cancellation. However, the school must have established its nonprofit status with the IRS and must be licensed by the state (that is, must be providing elementary and/or secondary education according to State law).

A borrower may receive a **Defense Loan** cancellation for teaching in a proprietary school if that school has established its nonprofit status with the IRS.

### *What if the borrower teaches in a preschool or prekindergarten program?*

A borrower may receive teacher cancellation for teaching service performed in a preschool or prekindergarten program only if the State considers the program to be a part of its elementary education

### Low-Income Schools: Developing the Directory

The Department considers a school to be a low-income school only if:

1) it is in a school district that qualifies for federal funding based on the large number of low-income families in the district; and

2) more than 30 percent of the school's enrollment is made up of children from low-income families.

Information about the compilation and publication of the directory is available from the Campus-Based Call Center at 1-877-801-7168:

Contact Person: Pamela Wills

U.S. Department of Education
Campus-Based Operations
UCPIII, Sixth Floor
830 First Street, NE
Washington, DC 20202-5453

program. A low-income-school-directory designation that includes prekindergarten or kindergarten does not suffice for a state determination of program eligibility. The school must check with the state superintendent of public instruction to determine whether these programs are part of the State elementary education program.

A borrower cannot receive teacher cancellation for teaching service performed in a Job Corps Project unless the teaching is conducted in an elementary or secondary school or school system.

## Cancellation for teaching in low-income schools

A cancellation based on teaching in a school serving students from low-income families may be granted only if the borrower taught in an eligible school that is listed in the *Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. The Department compiles and publishes this directory of low-income schools annually after consulting with each state's educational agency.

**Low-income schools cite**
34 CFR 674.53(a)

The Directory lists, on a state-by-state and territory-by-territory basis, the schools in which a borrower may teach during the school year to qualify for deferment and cancellation benefits. The Directory is currently available in electronic format at: **http://www.ed.gov/offices/OSFAP/Students/repayment/teachers/**(click on "Cancelling a Perkins Loan").

All elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) are considered to qualify as schools serving low-income families for the purpose of teacher cancellations of Perkins Loans and NDSLs. Elementary and secondary schools operated on reservations by Indian tribal groups under contract with the BIA are also considered to qualify for this purpose.

**BIA schools cite**
34 CFR 674.53(a)(5)

If a borrower is teaching at a school that is on the list one year but not in subsequent years, the borrower may continue to teach in that school and remain eligible to receive a cancellation for service in that school. If a list is not available before May 1 of any year, the Department may use the previous year's list to make the service determination for that year.

**Losing low-income status cite**
34 CFR 674.53(a)(6)

## Cancellation for teaching in special education

A person who provides one of the following services does not qualify as a teacher unless 1) that person is licensed, certified, or registered by the appropriate state education agency for that area in which he or she is providing related special educational services and 2) the services provided by the individual are part of the educational curriculum for handicapped children:

**Special education cite**
34 CFR 674.51(q)(3)

- speech and language pathology and audiology;
- physical therapy;
- occupational therapy;

- psychological and counseling services; or
- recreational therapy.

### *Cancellation for teaching in a field of expertise*

**Field of expertise cite**
34 CFR 674.51(r)

For a borrower to be considered as teaching in a field of expertise, the majority of classes taught must be in the borrower's field of expertise.

A borrower who is teaching in science, mathematics, foreign language, or bilingual education qualifies for cancellation even if the State has not designated the subject area in which he or she is teaching as a shortage area.

## NURSE OR MEDICAL TECHNICIAN CANCELLATION

**Nurse or medical technician cite**
34 CFR 674.56 (a)

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full time as a **nurse** or **medical technician** providing health care services.  The borrower must provide health care services *directly* to patients.  (See definitions at the end of this chapter.)

## CHILD OR FAMILY SERVICES CANCELLATION

**Child or family services agency cite**
34 CFR 674.56 (b)

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full time as an employee of an eligible public or private nonprofit child or family service agency and has provided or supervised the provision of services to both **high-risk children** who are from **low-income communities** and the families of such children.

To receive loan cancellation for being employed at a child or family services agency, a borrower must be providing services only to high-risk children who are from low-income communities. The borrower may also be providing services to adults, but these adults must be members of the families of the children for whom services are provided. The services provided to adults must be secondary to the services provided to the high-risk children. The Department has determined that an elementary or secondary school system or a hospital is not an eligible employing agency.

## EARLY INTERVENTION CANCELLATION

**Early intervention cite**
34 CFR 674.56(c)

Schools must cancel up to 100% of a Perkins Loan if the borrower has been employed full time as a **qualified professional provider of early intervention services** in a public or other nonprofit program under public supervision.

## HEAD START CANCELLATION

**Head start cite**
34 CFR 674.58

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full time as a staff member in the educational part of a preschool program carried out under the Head Start Act.

A full-time staff member is someone who is regularly employed in a full-time professional capacity to carry out the educational part of a Head Start Program. The program must operate for a full academic year, or its equivalent, and the borrower's salary may not be more than that of a comparable employee working in the local educational agency. An authorized official of the Head Start Program must sign the borrower's cancellation form to certify the borrower's service.

The cancellation rate is 15% of the original principal loan amount—plus the interest that accrued during the year—for each complete school year.

## LAW ENFORCEMENT OR CORRECTIONS OFFICER CANCELLATION

**Law enforcement cite**
34 CFR 674.57

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full time as a qualifying law enforcement or corrections officer.

To establish the eligibility of a borrower for the law enforcement or corrections officer cancellation provision, the school must determine that (1) the borrower's employing agency is eligible and that (2) the borrower's position is essential to the agency's primary mission.

1. A local, state, or federal agency is an eligible employing agency if it is publicly funded and its activities pertain to crime prevention, control, or reduction or to the enforcement of the criminal law. Such activities include, but are not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals; activities of courts and related agencies having criminal jurisdiction; activities of corrections, probation, or parole authorities; and problems relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction.

   Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible.

2. For the borrower's position to be considered essential to the agency's primary mission, he or she must be a full-time employee of an eligible agency and a sworn law enforcement or corrections officer or person whose principal responsibilities are unique to the criminal justice system and are essential in the performance of the agency's primary

mission. The agency must be able to document the employee's functions.

Individuals whose official responsibilities are supportive, such as those that involve typing, filing, accounting, office procedures, purchasing, stock control, food service, transportation, or building, equipment, or grounds maintenance are not eligible for the law enforcement or correction officer loan cancellation regardless of where these functions are performed.

Prosecuting attorneys whose primary responsibilities are to prosecute criminal cases on behalf of public law enforcement agencies are eligible for cancellation benefits. However, a borrower employed as a public defender does not qualify for cancellation benefits under this provision.

## MILITARY SERVICE CANCELLATION

**Military service cite**
34 CFR 674.59

Schools must cancel up to 50% of a Perkins Loan if the borrower has served a period of full-time active duty in the armed forces (that is, the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard), the National Guard, or the Reserves. The service must be in an **area of hostilities** or an **area of imminent danger** that qualifies for special pay under Section 310 of Title 37 of the U.S. Code. The cancellation rate for every complete year of qualifying service is 12.5% of the original principal loan amount plus any interest that accrued during the year.

To qualify for military cancellation, a borrower must be serving a period of full-time active duty in the armed forces (that is, the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard). A member of the National Guard or the Reserves serving a period of full-time active duty in the armed forces is also eligible to receive a military deferment. For a Perkins Loan or NDSL cancellation, the service in the armed forces must be in an **area of hostilities** or an **area of imminent danger** that qualifies for special pay under Section 310 of Title 37 of the U.S. Code. For Defense Loan cancellation, the service does not have to be in an area of hostilities or area of imminent danger. The borrower's commanding officer must certify the borrower's service dates.

The cancellation rate of 12.5% of the original principal loan amount is for each **complete** year of service; service for less than a complete year or any fraction of a year beyond a complete year does not qualify.

## VOLUNTEER SERVICE CANCELLATION

**Volunteer service cite**
34 CFR 674.60

Schools must cancel up to 70% of a Perkins Loan if the borrower has served as a Peace Corps or ACTION (under Title I, Part A of the Domestic Volunteer Service Act of 1973) volunteer. An authorized official of the Peace Corps or ACTION program must sign the borrower's cancellation form to certify the borrower's service. Schools apply cancellation for volunteer service in the following increments:

- 15% of the original principal loan amount—plus any interest that accrued during the year—for each of the first and second 12-month periods of service and
- 20% of the original principal loan amount—plus any interest that accrued during the year—for each of the third and fourth 12-month periods of service.

## U.S. ARMY LOAN REPAYMENT PROGRAM

It is useful to know that the U.S. Army offers a loan repayment program as an enlistment incentive. If a Perkins Loan (or Stafford Loan) borrower serves as an enlisted person in the U.S. Army, in the Army Reserves, or in the Army National Guard, the U.S. Department of Defense will repay a portion of the loan. For more information, the student should contact his or her local military recruiting office. This is a recruitment program, not a cancellation, and does not pertain to an individual's prior Army service.

## REIMBURSING AMOUNTS CANCELED

For Perkins Loans and NDSLs, the Department will reimburse each school every award year for the principal and interest canceled from its Perkins Loan Fund for all of the cancellation provisions except for death, total and permanent disability, bankruptcy, and closed school discharge. The school must deposit in its fund the amount reimbursed. Note that interest does not accrue on any loan during the period that a borrower is performing service to qualify for cancellation benefits. (See the discussion of Concurrent Service in the previous chapter.) (Schools are not required to deposit reimbursements for loans made prior to July 1, 1972, into the Perkins Fund. These reimbursements are considered institutional funds.)

**Cancellation reimbursement cite**
34 CFR 674.63(b)

## DEFINITIONS

The following are definitions of terms used in this chapter:

**Definitions cite**
34 CFR 674.51

**Children and youth with disabilities.** Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (the Act).

The Act defines a "child with a disability" as one (1) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (2) who, by reason thereof, needs special education and related services.

For a child age three through nine, the term a “child with a disability” may include, at the discretion of a state and the local education agency, individuals (1) experiencing developmental delays, as defined by the state and as measured by appropriate instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) who, by reason thereof, require special education and related services.

**Early intervention services.** Those services defined in section 632(4) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

**High-risk children.** Individuals under the age of 21 who are low-income and at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

**Infants and toddlers with disabilities.** Infants and toddlers under age three, inclusive, who need early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

The Act defines an infant or toddler with a disability as an individual under three years of age who needs early intervention services because the individual (1) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

The term **infants and toddlers with disabilities** may also include, at a state’s discretion, individuals under age three, who are at risk of having substantial developmental delays if early intervention services are not provided.

**Low-income communities.** Communities in which there is a high concentration of children eligible to be counted under Title I of the Elementary and Secondary Education Act of 1965, as amended.

**Medical Technician.** An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate state agency in the state in which he or she provides health care services; an allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system. You can find a list of accredited allied health professions at **[http://www.ama-assn.org/ama/pub/category/2302.html]**. *This is not a complete list of all allied health professions.*

**Nurse.** A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate state agency to provide nursing services.

**Qualified professional provider of early intervention services.** A provider of services, as defined in section 632 of the Individuals with Disabilities Education Act.

Section 632 of that Act defines early intervention services as developmental services that:

- are provided under public supervision;
- are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;
- are designed to meet the developmental needs of an infant or toddler with a disability in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development;
- meet the standards of the state in which they are provided;
- are provided by qualified personnel, including: special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians;
- to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate;
- are provided in conformity with an individualized family service plan adopted in accordance with section 636 of the Individuals with Disabilities Education Act.

Under the Individuals with Disabilities Education Act, early intervention services include: family training, counseling, and home visits; special instruction; speech-language pathology and audiology services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from the other early intervention services; social work services; vision services; assistive technology devices and services; and transportation and related costs necessary to enable infants, toddlers, and their families to receive other services identified in 632(4).

**Teaching in a field of expertise.** The majority of classes taught are in the borrower's field of expertise.

# Due Diligence: Billing & Collection

CHAPTER 7

*The school must afford the borrower maximum opportunity to repay a Federal Perkins Loan. Specific steps the school must take include, but are not limited to, billing the borrower, sending overdue notices, and conducting address searches if the borrower cannot be located. If billing procedures fail, a school must take more aggressive collection steps such as hiring a collection firm and/or litigating.*

## GENERAL REQUIREMENTS

While billing and collection activities involve many steps, there are general requirements that your school must adhere to at all times. For information about maintaining billing and collection records, see chapter 1 of this volume.

You must inform the borrower of all program changes that affect his or her rights and responsibilities. Your school must respond promptly to the borrower's inquiries. If a borrower disputes a loan and you cannot resolve the dispute, you must explain the services provided by the Department's Student Loan Ombudsman's office.

Keeping current information on a borrower makes it easier for the school to know when repayment must begin and where to send billing notices. The various offices at the school—the admissions, business, alumni, placement, financial aid, and registrar's offices, and others, as necessary—must provide any available information about the borrower that is relevant to loan repayment, including:

- the borrower's current enrollment status;
- the borrower's expected graduation or termination date;
- the date the borrower officially withdraws, drops below half-time enrollment, or is expelled; and
- the borrower's current name, address, telephone number, Social Security Number, and driver's license number (if any).

**General requirements cites**

**General**
34 CFR 674.41(a)

**Coordination of information**
34 CFR 674.41(b)

## EXIT INTERVIEWS

Contact with the borrower becomes even more important as the borrower's last day of attendance approaches. Your school must conduct exit counseling with borrowers either in person, by audiovisual presentation, or by interactive electronic means. (If you

**Exit interview cite**
34 CFR 674.42(b)

## FSA Ombudsman

The Ombudsman's office is a resource for borrowers to use when other approaches to resolving student loan problems have failed. Borrowers should first attempt to resolve complaints by contacting the school, company, agency, or office directly involved. If the borrower has made a reasonable effort to resolve the problem through normal processes and has not been successful, he or she should contact the FSA Ombudsman.

| | | |
|---|---|---|
| Office of the Ombudsman | Toll-free: | 1 (877) 557-2575 |
| U.S. Dept. of Education | | (202) 377-3800 |
| 830 First St., NE | Fax: | (202) 257-0549 |
| Mailstop #5144 | | |
| Washington, DC 20202-5144 | **http://fsahelp.ed.gov** | |

conduct exit counseling through interactive electronic means, you must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the exit counseling.) Schools must conduct this counseling shortly before the student graduates or drops below half-time enrollment (if known in advance). If individual interviews are not possible, group interviews are acceptable.

As an alternative, in the case of students enrolled in a correspondence program or a study-abroad program that your school approves for credit, you may provide written counseling materials by mail within 30 days after the borrower completes the program.

During the exit interview, the financial aid counselor must review and update all of the repayment terms and information addressed in the initial loan counseling session. (See chapter 3 for a list of information included in the loan counseling session.) The school must also exchange the following additional information with the borrower:

- the name and address of the borrower's expected employer;
- debt-management strategies that the school determines would best assist the borrower;
- how to contact the Student Loan Ombudsman's office and an explanation of the services this office provides.

The financial aid counselor must emphasize the seriousness and importance of the repayment obligation the borrower is assuming, describing in forceful terms the likely consequences of default, including adverse credit reports, litigation, and assignment to a collection agency. The counselor must further emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with the school's educational or other services.

If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling.

Finally, schools must document all exit interviews.

## DISCLOSURE OF REPAYMENT INFORMATION

**Disclosure of repayment information cite**
34 CFR 674.42(a)

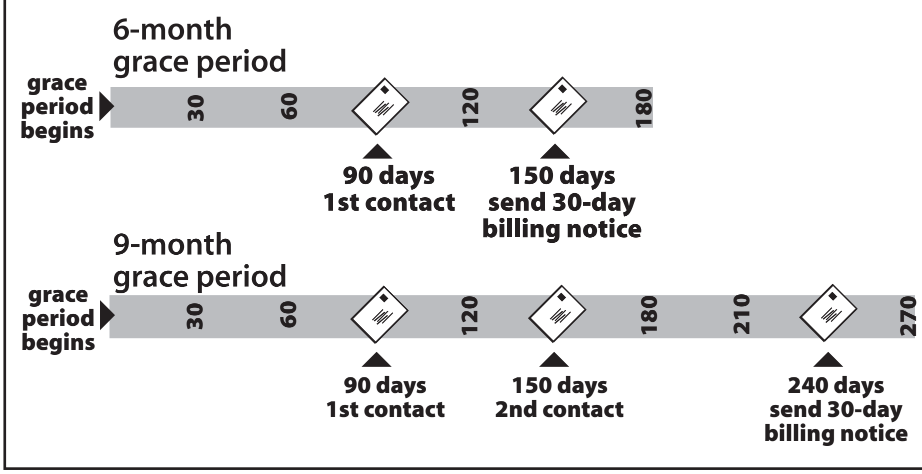
Either shortly before the borrower ceases at least half-time study or during the exit interview, schools must disclose critical repayment information to the borrower **in a written statement**. Your school must provide the borrower with a copy of his or her signed promissory note. Most of the repayment terms that the school must disclose to the borrower already appear in the promissory note. The school must also give the borrower the following repayment information:

- the name and address of the school to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent;
- the name and address of the party to which payments should be sent;
- the estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin;
- the repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, the rate of interest, and the number, amount, and frequency of required payments; and
- the total interest charges that the borrower will pay on the loan pursuant to the projected repayment schedule.

Since schools must conduct exit interviews, schools may find it is most convenient to give the borrower the repayment disclosure during the exit interview.

If a borrower enters the repayment period without the school's knowledge, the school must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

**Contact with Borrower During Grace Period**




| **Applicable Grace Periods** | **perkins** | **ndsl** on or after 10-1-80 | **ndsl** before 10-1-80 |
|---|---|---|---|
| *initial grace period* | 9 months | 6 months | 6 months |
| *post-deferment period* | 6 months | 6 months | none |

## CONTACT DURING GRACE PERIODS

**Grace period contact cite**
34 CFR 674.42(c)

A school must contact the borrower during both initial and post-deferment grace periods to remind him or her when repayment will begin or resume.

Your school must contact the borrower three times during the nine-month initial grace period. For a loan with a six-month initial grace period, the school must contact the borrower twice during that period. The school must also contact the borrower twice during any six-month post-deferment grace period. The chart above shows the length of initial and post-deferment grace periods for NDSLs and Perkins Loans.

The **first contact** must be **90 days** after any grace period (initial or post-deferment) begins. The school must remind the borrower that he or she is responsible for repaying the loan. The school must also inform the borrower of the amount of principal and interest, as projected for the life of the loan, and the due date and amount of the first (or next) payment.

The **second contact** must be **150 days** after any grace period begins, when the school must again remind the borrower of the due date and amount of the first (or next) payment. For loans with six-month grace periods, the second contact should coincide with the first billing notice. These two notices may be combined.

For loans with nine-month grace periods, the school must make a **third contact 240 days** after the grace period begins to remind the borrower of the date and amount of the first payment. This contact should coincide with the first billing notice. Again, the school may combine the two notices.

## BILLING PROCEDURES

Billing refers to that series of actions the school routinely performs to notify borrowers of payments due, remind them of overdue payments, and demand payment of overdue amounts.

The school may choose a coupon payment system as its method of billing. If so, the school must send the coupons to the borrower at least 30 days before the first payment is due.

If the school does not use a coupon system, it must, at least **30 days** before the first payment is due, send the borrower a statement of account and a written notice giving the name and address of the party to which payments should be sent. The statement of account includes information such as the total amount borrowed, the interest rate on the loan, and the amount of the monthly payment. For subsequent payments, the school must send the borrower a statement of account at least **15 days** before the due date of the payment.

If the borrower elects to make payments by means of an electronic transfer of funds from the borrower's bank account, the school is not required to send the borrower a statement of account at least 15 days before the due date of each subsequent payment. However, the school must send the borrower an annual statement of account.

**Billing procedures cite**
34 CFR 674.43

### *Late charges*

For loans made for periods of enrollment beginning on or after January 1, 1986, schools are required to impose a late charge when the borrower's payment becomes overdue. The charge is based either on the actual costs the school incurs in taking steps to obtain the overdue amount or on average costs incurred in similar attempts with other borrowers. The charge may not exceed 20% of the installment payment most recently due.

Your school must also impose a late charge if a borrower's payment is overdue and the borrower has not filed a complete request for forbearance, deferment, or cancellation on time. (To be complete, the request must contain enough information for you to confirm the borrower's eligibility.)

You may add the penalty or late charge to the principal amount of the loan as of the first day the payment was due. Alternatively, you may include the charge with the next payment that is scheduled after the date you notify the borrower that the charge must be paid in full by the next payment due date. You must inform the borrower of the late charge, preferably in the first overdue payment notice.

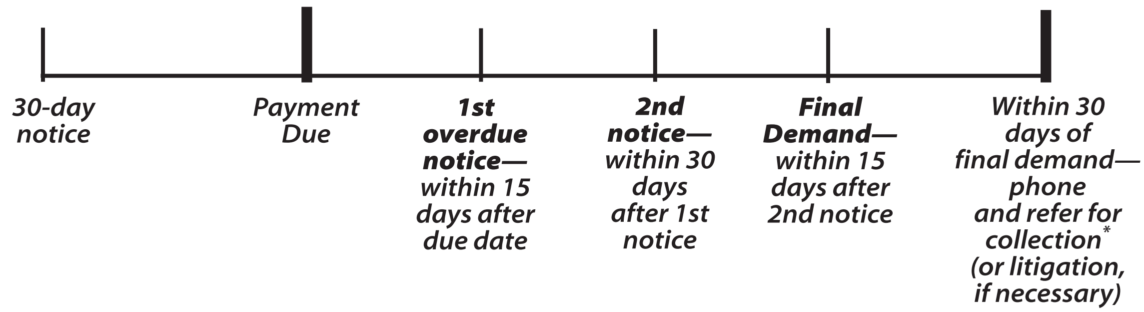
For a borrower who repays the full amount of past-due payments, the school may waive any late charges that were imposed.

**Late charges cite**
34 CFR 674.43(b)(2)

**Optional penalty charge for periods of enrollment beginning before 1/1/86**
34 CFR 674.31(b)(5)(ii)
34 CFR 674 Appendix E

Schools are authorized but not required to assess a penalty charge for an overdue payment on a loan made for a period of enrollment that began before January 1, 1986. The maximum penalty charge that may be assessed on a loan payable monthly is $1 for the first month and $2 for each additional month a payment is overdue; the maximum penalty for a loan payable bimonthly is $3; the maximum penalty for loans payable quarterly is $6. Penalty charges on these loans may be assessed only during the billing process.

# Billing Procedures




** The school can use the services of the Department's Default Reduction Assistance Project (DRAP) before the loan goes to a collection firm; DRAP is discussed in chapter 8.*

## *Notices of overdue payments*

**Overdue notices cites**
34 CFR 674.43(b)
34 CFR 674.43(c)

If a payment is overdue and you have not received a request for forbearance, deferment, or cancellation, you must send the borrower:

the **first** overdue notice 15 days after the payment due date;

the **second** overdue notice 30 days after the first overdue notice;

the **final demand letter** 15 days after the second overdue notice.

The final demand letter must inform the borrower that unless the school receives a payment or a request for forbearance, deferment, or cancellation **within 30 days** of the date of the letter, the school will refer the account for collection or litigation and will report the default to a credit bureau as required by law.

You may skip the first two letters and send just the final demand letter within **15 days** after a payment is overdue if the borrower's repayment history has been unsatisfactory or if you can reasonably conclude the borrower does not intend to repay the loan or to seek forbearance, deferment, or cancellation. A borrower is considered to have an unsatisfactory repayment history if he or she has failed to make payments when due, has failed to request deferment, forbearance, or cancellation on time, or has received a final demand letter.

## *Contacting the borrower by telephone*

**Telephone contact cite**
34 CFR 674.43(f)

If the borrower does not respond to the final demand letter within 30 days, you must try to contact him or her by telephone before beginning collection procedures. As telephone contact is often very effective in getting the borrower to begin repayment, one call may avoid the more costly procedures of collection.

You should make at least two attempts to reach the borrower on different days and at different times. If the borrower has an unlisted telephone number, you must make reasonable attempts to obtain it by contacting sources such as the borrower's employer or parents. If you are still unsuccessful, you should document the contact attempts in your files.

### *Contacting the endorser—loans before July 23, 1992*

If the borrower does not respond satisfactorily to the final demand letter, you must try to recover the amount owed from the borrower. For loans made prior to July 23, 1992, the school must also try to collect the amount owed from any endorser of the loan. It may help to send the endorser a copy of the final demand letter that was sent to the borrower and copies of all subsequent notices, including dunning letters. For loans made on or after July 23, 1992, an endorser is no longer required.

### *Loan acceleration*

You may *accelerate* a loan if the borrower misses a payment or does not file for deferment, forbearance, or cancellation on time. Acceleration means making payable immediately the entire outstanding balance, including interest and any applicable late charges or collection fees. Because this marks a serious stage of default, the borrower should have one last chance to bring his or her account current. For that reason, if the school plans to accelerate the loan, it must send the borrower a written acceleration notice at least 30 days in advance. The notice may be included in the final demand letter or in some other written notice sent to the borrower. If the loan is accelerated, you must send the borrower another notice to inform him or her of the date the loan was accelerated and the total amount due. Remember that acceleration is an option, not a requirement. However, if you plan to assign the loan to the Department for collection, you must first accelerate the loan. Once a loan has been accelerated, the borrower loses all rights to deferment and cancellation benefits for qualifying service performed *after* the date of acceleration.

**Loan acceleration cite**
34 CFR 674.43(e)

## ADDRESS SEARCHES

The school must take the following steps to locate the borrower if communications are returned undelivered (other than unclaimed mail):

- review the records of all appropriate school offices and
- review printed or web-based telephone directories or check with information operators in the area of the borrower's last known address.

If these methods are unsuccessful, you must intensify efforts to locate the borrower, using either school personnel or a commercial skip-trace firm. If you use school personnel, you must employ and document efforts comparable to commercial skip-tracing firms. You may also choose to use the Internal Revenue Service skip-tracing service provided through the Department.

**Address search cite**
34 CFR 674.44

## IRS/ED Skip-tracing Program

To help locate a borrower whose collection notices are returned undelivered, a school may participate in the IRS/ED skip-tracing service. The Higher Education Amendments of 1992 *eliminated the requirement* that schools use the IRS/ED skip-tracing service in carrying out the provisions of due diligence. However, we strongly encourage schools to continue to use this service, which is one of the most powerful tools for locating defaulted borrowers. The Department will continue to post periodic Dear Partner letters that give instructions for completing the Safeguard Procedures and Activity Reports for schools that participate in the Federal Perkins Loan Program.

Schools wishing to participate in the IRS/ED skip-tracing service for the first time must submit a Safeguard Procedures Report. To maintain eligibility to participate in the IRS/ED skip-tracing service, you must submit an annual Safeguard Activity Report, in accordance with the IRS publication 1075. If your school fails to submit the Safeguard Activity Report, it will lose its eligibility to participate in the service. The reports document that the school has procedures to safeguard the names and addresses of defaulted borrowers under the Federal Perkins Loan Program.

General questions should be directed to the Campus-Based Call Center at 1-877-801-7168. Schools may also wish to review Dear Partner Letter CB-01-12, August 2001 for more information about the IRS/ED Skip-tracing Program.

If you still can't locate the borrower after taking these steps, you must continue to make reasonable attempts at least twice a year until the account is assigned to the Department or the account is written off.

## COLLECTION PROCEDURES

Collection procedures are the more intensive efforts a school must make when borrowers have not responded satisfactorily to billing procedures and are considered seriously in default.

As part of the following collection activities, the school must inform the borrower of the availability of the Student Loan Ombudsman's Office.

**Collection procedures cites**
34 CFR 674.45

**Ombudsman information**
34 CFR 674.45(h)

**Credit bureau reporting**
34 CFR 674.45(a)(1)
34 CFR 674.45(b)

### *Credit bureau reporting*

A school must report a defaulted loan account to a national credit bureau organization. You may report the default to a credit bureau with which your school has an agreement or to a credit bureau with which the Department has an agreement (see below). You must report any subsequent changes in the status of the borrower's account to the same national credit bureau, using the procedures required by that credit bureau. You must respond within one month to any inquiry received from any credit bureau about reported loan information. Finally, you must notify all credit bureaus to which you reported the default when a borrower makes six consecutive, on-time monthly payments.

The Department has entered into an agreement with the four national credit bureaus listed below:

| | |
|---|---|
| Trans Union | (1-800/888-4213) |
| Experian (formerly TRW) | (1-800/831-5614 ext. 3) |
| CBI Equifax<br>*Ask for the CBI Equifax "territory" servicing your school.* | (1-770/740-4376) |
| Consumer Credit Association, Inc.<br>*Manager of Data Management Services* | (1-713/589-1190 ext. 2101) |

Credit bureaus charge fees for their services. These fees differ from credit bureau to credit bureau. These bureaus also have affiliated credit bureaus, which may have different fees from those of the national credit bureaus. The Department does not keep a list of these affiliated bureaus and their fees.

The Privacy Act authorizes disclosure of a borrower's account information to creditors without the borrower's consent if the disclosure helps enforce the terms and conditions of the loan. You may also make such disclosures about loans that haven't defaulted and/or are being disbursed. Reporting good credit history (as well as reporting defaulted loans) is essential to ensure that current and future creditors have complete information regarding the credit obligations of the borrower.

Under the Fair Credit Reporting Act, a borrower may appeal the accuracy and validity of the information reported to the credit bureau and reflected in the credit report. You should be prepared to handle the appeal and make necessary corrections to the report as required by the provisions of the act.

## Efforts to collect

The school must make a **first effort** to collect using either its own personnel or hiring a collection firm.

If the school's personnel or the collection firm cannot convert the account to regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, or cancellation), the school has two options—either to litigate or to make a second effort to collect.

### Efforts to collect cites

**First effort**
34 CFR 674.45(a)(2)

**Litigation or second effort**
34 CFR 674.45(c)

A **second effort** to collect requires one of the following procedures:

If the school first attempted to collect by using its own personnel, it must refer the account to a collection firm unless state law prohibits doing so.

If the school first used a collection firm, it must attempt to collect by using its own personnel or by using a different collection firm, or the school must submit the account to the Department for assignment.

If a collection firm (retained by a school as part of its second effort to collect) cannot place an account into regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, postponement, or cancellation), the firm must return the account to the school.

**Annual efforts cite**
34 CFR 674.45(d)

If the school is unsuccessful in its effort to place the loan in repayment after following the procedures above, the school must continue to make yearly attempts to collect from the borrower until:

- the loan is recovered through litigation;
- the account is assigned to the Department; or
- the loan is written off.

## *Ceasing collection*

**Ceasing collections cites**

**Ceasing collections**
34 CFR 674.47(g)

**Account write-off**
34 CFR 674.47(h)

A school may cease collection activity on a defaulted account with a balance of less than **$25** (including outstanding principal, accrued interest, collection costs, and late charges) if the borrower has been billed for this balance. A school may cease collection activity on defaulted accounts with balances of less than **$200** (including outstanding principal, accrued interest, collection costs, and late charges) if the school carried out the required due diligence and if the account has had no activity for four years. Although interest will continue to accrue and may put the account over $25 (or $200), you will not have to resume collection activity if you document that you ceased collection activity when the account was under $25 (or $200). However, the borrower will remain responsible for repaying the account, including accrued interest, and you may not assign the account to the Department. The account will still be included in the school's cohort default rate, if applicable, and the borrower will still be in default and ineligible for Federal Student Aid (FSA) funds.

A school may write off an account with a balance of **less than $5.00** (including outstanding principal, accrued interest, collection costs, and late charges). If you write off an account, you must deduct the amount of the account from the Perkins Loan Fund. If you receive a payment from a borrower after you have written off the loan, you must deposit that payment into the Fund.

**Collection costs waiver cite**
34 CFR 674.47(d)

## *Alternatives to litigation*

To avoid litigation, a school may offer to waive collection costs as incentive for repayment. You may waive *all* collection costs on a loan if the borrower makes a lump-sum payment of the entire amount outstanding, including principal and interest; a written repayment agreement is not required. You may also waive a *portion* of the collection costs on a loan if the borrower agrees to pay a corresponding portion of the loan within 30 days of entering into a written repayment agreement with the school. For example, if the borrower repays one-half the outstanding balance on a loan within 30 days of the agreement, the school may waive one-half of the collection costs incurred through the date of that payment. The amount of waived collection costs may be charged to the Perkins Loan Fund.

**Compromise cite**
34 CFR 674.33(e)

You may compromise the repayment of a defaulted loan if you have fully complied with all due diligence requirements and the borrower pays, in a single lump-sum payment, at least 90% of the outstanding principal balance, plus all interest and collection fees. The federal share of the compromise repayment must bear the same relation to the school's share as the Federal Capital Contribution (FCC) bears to the Institutional Capital Contribution (ICC).

A borrower may rehabilitate a defaulted Perkins Loan by making 12 consecutive on-time payments. A rehabilitated loan is returned to regular repayment status. (See chapter 8 for more information.)

A borrower may include her defaulted Perkins Loan, NDSL, or Defense Loan in a Direct or Federal Consolidation Loan. The amount eligible for consolidation under either program is the sum of the unpaid principal, accrued unpaid interest, late charges, and outstanding collection costs. A defaulted loan that is being repaid under a court order remains in default status until paid and is not eligible for consolidation.

**Consolidating Defaulted Perkins Loans**

A borrower with a defaulted Perkins Loan and an outstanding FFEL should contact his or her current FFEL lender for information about obtaining a Federal Consolidation Loan.

A borrower with a defaulted Perkins Loan and an outstanding Direct Loan can get information about obtaining a Direct Consolidation Loan by contacting the Direct Loan Consolidation Department at 1-800-557-7392 or by visiting the Direct Loan web site: **http://www.ed.gov/DirectLoan**.

**Litigation cites**
34 CFR 674.46
HEA 484(a)

## *Litigation*

If the collection procedures described in this section do not result in the repayment of a loan, the school must review the account for litigation at least once a year. If all the conditions are met, the school must litigate. The conditions are:

- the total amount owed, including outstanding principal, interest, collection costs, and late charges, on all the borrower's Perkins Loans and NDSLs at the school is more than $200;
- the borrower can be located and served with process;
- the borrower either has enough assets attachable under state law to cover a major portion of the debt or enough income that can be garnished under state law to satisfy a major portion of the debt over a reasonable period of time (defining a "reasonable period of time" is left to the school);
- the borrower does not have a defense that will bar judgment for the school; and
- the expected cost of litigation (including attorneys' fees) does not exceed the amount that can be recovered from the borrower.

Even if all the above conditions are not met, your school may sue if it chooses to do so. If the borrower has a partial defense that may bar judgment for the school, you must weigh the costs of litigation against the costs of recovery based on the amount of the enforceable portion of the debt. No federal or state statute of limitation can apply to enforcement actions to collect Perkins Loans or NDSLs.

Your school must attempt to recover from the borrower all litigation costs, including attorneys' fees, court costs, and other related costs, to the extent permitted by applicable state law. You are also required to try to recover all costs previously incurred in the collection of overdue payments if the borrower has not paid these collection costs; a percentage of these unrecovered costs may be charged to the Fund as explained later in this chapter under "Billing and Collection Costs."

When a school has filed suit to collect a defaulted Perkins Loan or NDSL and a judgment has been rendered on the loan, the borrower is obligated to repay only the amount of the judgment obtained on the loan. A defaulted loan that is being repaid under court order remains in default status until paid and is not eligible for consolidation. After a judgment is satisfied on the defaulted loan, the student is again eligible for future awards under these programs if all other eligibility criteria are met.

Your school may assign the account to the Department for collection if the amount outstanding is $25 or more (including principal, interest, collection costs, and late charges) and your school cannot collect a payment after following all collection procedures (including litigation, if required).

## BILLING AND COLLECTION COSTS

Your school must charge the borrower for reasonable **billing** costs associated with past-due payments (not routine billing costs, which are included in the administrative cost allowance [ACA]), and **collection** costs for address searches, use of contractors for collection of the loan, litigation, and/or bankruptcy proceedings.

If your school cannot recover billing and collection costs from the borrower, you may charge the costs to the Fund, provided the costs fall within the specifications described in the following paragraphs. (Collection costs are included in the ACA, but if collection costs exceed the ACA, you must report the additional costs in the separate collection costs category on the FISAP.)

The only **billing** costs a school may charge the Fund are the costs of telephone calls made to demand payment of overdue amounts not paid by the borrower. Even if the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the school may charge the Fund only for the unpaid portion of the actual cost of the calls.

**Charging costs to fund cite**
34 CFR 674.47

**Collection costs for loans made from 1981 through 1986**
For loans made from 1981 through 1986, many promissory notes contain a limitation on the amount of costs that can be recovered from the borrower (25% of the outstanding principal and interest due on the loan). As this provision has not been applicable since the beginning of the 1987-1988 award year, if these borrowers ask for new advances, the Department strongly encourages schools to issue new promissory notes without this provision and to require the provisions of the new note to apply to repayment of previous advances. The borrower will then be liable for **all** collection costs on all of his or her outstanding loans borrowed under this program. (However, the advances made prior to the signing of the new note do not qualify for new deferment and cancellation benefits.)

The following **collection** costs may be charged to the Perkins Loan Fund if the costs are **waived** or **not paid by the borrower**:

**Collection costs waived.** If your school waives collection costs as incentive for repayment, the amount waived may be charged to the Fund.

**Cost of a successful address search.** You may charge to the Fund a reasonable amount for the cost of a successful address search if you used a commercial skip-tracing service or employed your school's personnel to locate the borrower using comparable methods. (Defining a reasonable amount is left to the school.)

**Cost of reporting defaulted loans to credit bureaus.** You may charge to the Fund the cost of reporting a defaulted loan to a credit bureau, reporting any change in the status of a defaulted account to the bureau to which the school had previously reported the account, and responding to any inquiry from a credit bureau about the status of a loan.

**Costs of first and second collection efforts.** You may charge to the Fund collection costs not paid by the borrower if they do not exceed—for first collection efforts—30% of the total principal, interest, and late charges collected and—for second collection efforts—40% of the principal, interest, and late charges collected. The school must reimburse the Fund for collection costs initially charged the Fund but subsequently paid by the borrower.

**Collection costs resulting from rehabilitation.** Collection costs charged to the borrower on a rehabilitated loan may not exceed 24% of the unpaid principal and accrued interest as of the date following application of the 12th payment. Until July 1, 2002, if the actual collection costs exceed 24% of the unpaid principal and accrued interest, the school may charge the Fund the remaining costs. Collection costs are not restricted to 24% in the event that the borrower defaults on the rehabilitated loan.

**Collection costs resulting from litigation, including attorney's fees.** Collection costs resulting from litigation, including attorney's fees, may be charged to the Fund if not paid by the borrower, but must not exceed the sum of:

- court costs specified in 28 U.S.C. 1920;
- other costs incurred in bankruptcy proceedings in taking actions required or authorized under 34 CFR 674.49;
- costs of other actions in bankruptcy proceedings to the extent that those costs together with other costs incurred in bankruptcy proceedings do not exceed 40% of the total amount of judgment obtained on the loan; and
- 40% of the total amount recovered from the borrower in any other proceeding.

**Costs of firm performing both collection and litigation services.** If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, the amount for both functions that may be charged to the Fund may not exceed the sum of **40%** of the amount of principal, interest, and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

Due diligence activities involving **fixed costs** (telephone contacts, credit bureau reporting, and bankruptcy procedures) may be charged to the Fund whether or not the actions are successful. Other activities, such as address searches, collection, and litigation (other than bankruptcy), are typically performed on a **contingent-fee** basis. If these activities are *unsuccessful*, there are no costs charged to the school and therefore no costs may be charged to the Fund. If these activities are *successful*, you may charge the associated allowable costs to the Fund.

## *Assessing and documenting costs*

**Assessing costs cite**
34 CFR 674.45(e)

You may charge either actual costs incurred in collecting the borrower's loan or average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

Your school must assess all reasonable collection costs against the borrower despite any provisions of state law that would conflict with the above provisions.

You must document the basis for the costs assessed. For audit purposes, a school must keep documentation supporting costs, including telephone bills and receipts from collection firms.

You should provide a notice explaining to the borrower how your school calculates collection costs.

## USING BILLING AND COLLECTION FIRMS

Your school may use a contractor for billing or collection, but it is still responsible for complying with due diligence regulations regarding those activities. For example, the school, not the billing or collection firm, is responsible for deciding whether to sue a borrower in default. The school is also responsible for decisions about canceling, or deferring repayment, granting forbearance, extending the repayment period, and safeguarding the funds collected.

**Billing and collection firms cite**
34 CFR 674.48

If you use a billing service, you may not use a collection firm that owns or controls the billing service or is owned or controlled by the billing service. In addition, you may not use a collection firm if both the collection firm and billing service are owned or controlled by the same corporation, partnership, association, or individual.

### *Account protection*

A school must ensure that its billing service and collection firm maintain a fidelity bond or comparable insurance to protect the accounts they service.

If you **don't** authorize your collection firm to deduct its fees from borrowers' payments, the firm must be bonded or insured for at least the amount that you expect to be repaid over a two-month period on the assigned accounts.

If you **do** authorize your collection firm to deduct its fees from borrowers' payments you must ensure that:

- if the amount you expect to be repaid over a two-month period is **less than $100,000** — the collection firm is bonded or insured for the lesser of (a) 10 times the amount the school expects to be repaid over a two-month period on assigned accounts; or (b) the amount the firm expects to collect in a two-month period on **all** accounts it has in its portfolio (not just the school's account.)
- if the amount you expect to be repaid in a two-month period is **$100,000 or more** — the collection firm has a fidelity bond or comparable insurance **that names your school as the beneficiary** and is bonded or insured for an amount not less than the amount of funds the school can reasonably expect to be repaid during that two-month period.

At least once a year, the school must review the amount of repayments it expects to receive from billing or collection firms to ensure adequate bond or insurance coverage.

A school using a law firm to collect must review the firm's bond or its insurance policy to determine whether the firm is protected against employee misappropriation. If the firm's malpractice insurance also covers misappropriation of funds, that policy is considered to provide coverage.

# Default

CHAPTER 8

*Default in the Federal Perkins Loan Program is defined as "the failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement."*

Chapter 7 discussed options that schools may offer borrowers to resolve default and avoid litigation, such as waiver of collection costs, compromise of repayment, and consolidation. This chapter discusses rehabilitation, another method to resolve default. This chapter also details how schools must manage and report defaulted loans and, if necessary, assign them to the Department.

## DEFAULT STATUS AND STUDENT ELIGIBILITY

### Satisfactory repayment arrangements

A borrower who is in default on a Perkins Loan may regain eligibility for further federal student aid by making satisfactory repayment arrangements. (See *Volume 1 - Student Eligibility*.) If the borrower has made satisfactory repayment arrangements, the school must appropriately update the loan status code in the National Student Loan Data System.

### Loans with judgments

When a school has filed suit to collect a defaulted Perkins Loan or NDSL and a judgment has been rendered on the loan, the borrower is obligated to repay only the amount of the judgment obtained on the loan. After a judgment is satisfied on the defaulted loan, the student is again eligible for aid from Federal Student Aid (FSA) programs if all other eligibility criteria are met. However, if a borrower has previously satisfied a defaulted student loan **involuntarily** (for instance, through wage garnishment), you should consider this as evidence of unwillingness to repay and should not approve further loan assistance to the borrower.

### Previously defaulted loans discharged for school closure

A Perkins Loan made on or after January 1, 1986, may be discharged if the borrower is unable to complete his or her program

**Closed school discharge cite**
34 CFR 674.33(g)

of study due to the closure of the school that made the loan. A defaulted borrower whose loan is discharged under this closed school provision is eligible for additional federal student aid, provided that he or she meets all other eligibility criteria. (Schools that close must assign all Perkins Loans to the FSA Collections. FSA Collections, or the school, if the school still holds the loan, must report to credit bureaus that the loan has been discharged.)

## LOAN REHABILITATION

**Rehabilitation cite**
34 CFR 674.39

A borrower may rehabilitate a defaulted Perkins Loan by making 12 consecutive on-time payments. Your school must establish a rehabilitation program and notify all borrowers with defaulted loans of the option to rehabilitate and the advantages of rehabilitation.

The rehabilitation payments should be sufficient to satisfy the outstanding balance on the loan within a 10-year repayment period.

If a judgment has been entered on the loan, the borrower must sign a new promissory note after making the 12 required payments.

Within 30 days of receiving the borrower's last on-time consecutive monthly payment, you must:

- return the borrower to regular repayment status;
- treat the first of the 12 consecutive payments as the first payment in a new 10-year repayment schedule; and
- instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

After rehabilitating a defaulted loan and returning to regular repayment status, a borrower regains the benefits and privileges of the promissory note, including deferment and cancellation.

If a borrower chooses to rehabilitate a defaulted loan and then fails to make 12 consecutive on-time payments, the rehabilitation is unsuccessful, but the borrower may still make further attempts to rehabilitate the defaulted loan. Also, if a borrower successfully rehabilitates a defaulted loan and maintains good standing on the loan, the borrower may continue to attempt to rehabilitate other defaulted Perkins loans. However, if the borrower successfully rehabilitates a defaulted loan, but the loan later returns to default, the borrower may not attempt to rehabilitate that loan again or any other defaulted Perkins loan.

See chapter 7 for information on assessing collection costs on rehabilitated loans.

## ASSIGNMENT

You may assign a defaulted Perkins Loan or NDSL to the FSA Collections if:

- the school has not been able to collect despite having followed due diligence procedures (including at least a first level of collection and litigation, if required by the regulations in effect on the date the loan entered default);
- the total amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs, and late charges, is $25 or more; and
- the loan has been accelerated.

Your school must assign to FSA Collections all its Perkins and NDSL loans if:

- the school is closing;
- the school is withdrawing from the Federal Perkins Loan Program; or
- the Department is terminating the school's participation in the program.

A loan may be assigned only during the submission period the Department establishes.

### Required documentation

A school *may be required* to submit the following documents to FSA Collections for any loan it proposes to assign:

- one original and one photocopy of the assignment form—ED Form 553, provided by the Department and completed by the school (the form must include the borrower's Social Security Number);
- the original promissory note or a certified copy of the original note;
- a copy of the repayment schedule and a complete statement of the payment history;
- copies of all approved requests for deferment and cancellation;  a copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan;
- documentation that the school 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;
- copies of all pleadings filed or received by the school on behalf of a borrower who has filed a petition in bankruptcy

**Assignment cites**
34 CFR 674.50
Dear Colleague Letter CB-98-13 and CB-98-14

**Assignment address**
A school should mail assignments to:

U.S. Department of Education
Perkins Loan Assignment
Processing Center
P.O. Box 4136
Greenville, TX 75403-4136

**Perkins loan liquidation procedures cite**
Dear Partner Letter CB-00-05, dated May 2000

and whose loan obligation is determined to be nondischargeable;

- a certified copy of any judgment order entered on the loan; and
- documentation that the school has complied with all of the due diligence requirements if the school has a cohort default rate that is equal to or greater than 20% as of June 30 of the second year preceding the submission period.

You may not assign a loan to FSA Collections if:

- the borrower has received a discharge in bankruptcy—unless the bankruptcy court has determined that the student loan obligation is nondischargeable and has entered a judgment against the borrower or unless a court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;
- your school has sued the borrower (unless the judgment has been entered and assigned to the United States); or
- the loan has been canceled because the borrower has died.

### *Terms of assignment*

If FSA Collections accepts the assignment of a loan, it will give the school written notice to that effect. **By accepting the assignment, the Department acquires all rights, title, and interest in the loan.** You must endorse and forward to the Department any subsequent payment(s) the borrower may make.

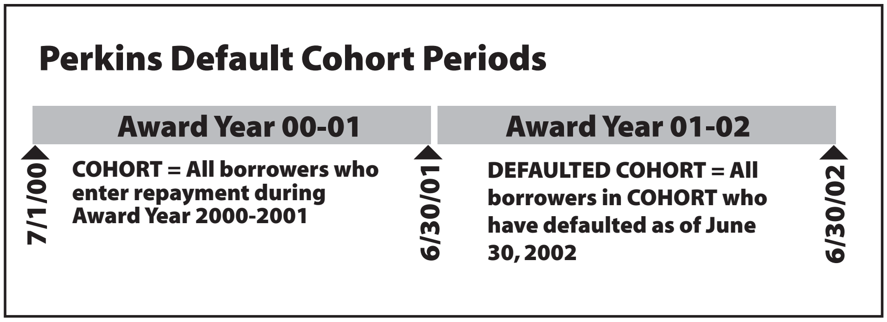
If FSA Collections later determines an assigned loan to be unenforceable because of an act or omission on the part of your school or its agent, your school will have to compensate the Perkins Loan Fund in the amount of the unenforceable portion of the outstanding balance. Once the fund is reimbursed, the Department transfers all rights to the loan back to the school.

A borrower whose loan has been assigned to the United States for collection continues to be in default on the loan and is ineligible for FSA funds until the borrower provides confirmation from FSA Collections that he or she has made satisfactory arrangements to repay the loan.

## DEFAULT REDUCTION ASSISTANCE PROJECT

**Default reduction assistance project cite**
Dear Colleague Letter CB-94-7

To assist schools in bringing defaulted borrowers into repayment, the Department has established the Default Reduction Assistance Project (DRAP). Under DRAP, a school can request that the Department send a borrower any of three letters designed to warn the student of the seriousness of default. The Department provides these services at no cost to the school. Participation in DRAP is voluntary.




General questions about DRAP should be directed to the Campus-Based Call Center at 1-877-801-7168. As DRAP is intended to get the borrower back into repayment **before** the account goes to a collection firm, this service should **not** be requested once a collection agency is involved. DRAP service is usually provided during the 30-day period during which a school is awaiting response to the final demand letter.

## PERKINS COHORT DEFAULT RATES

### *Defining and calculating the cohort default rate*

Your school's cohort default rate is calculated for a particular year based on information you report in Part 3, Sections D and E of the FISAP.

For any award year in which 30 or more borrowers enter repayment, the **cohort default rate** is the percentage of those current and former students who enter repayment in that award year on loans received for attendance at that school and who default before the end of the following award year.

For any award year in which **fewer** than 30 current and former students at the school enter repayment on a loan received at the school, the **cohort default rate** is the percentage of those current and former students who entered repayment on loans received for attendance at that school in any of the **three** most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

### *Borrowers entering repayment*

For purposes of the cohort default rate, a loan enters repayment only once in its life. This repayment begins the day after the end of the initial grace period or the day that the borrower waives his or her initial grace period.

### *Borrowers in default*

A borrower must be included in determining the school's cohort default rate if the borrower's default has persisted for at least 240 consecutive days for a loan repayable monthly or 270 consecutive days for a loan repayable quarterly.

**Calculating cohort default rate cite**
34 CFR 674.5(b)

**Calculating cohort default rate example**
During the 2000-2001 award year, more than 30 borrowers entered repayment at Justinian University. For the Fiscal Operations Report for 2001-2002 and Application to Participate for 2003-2004 (FISAP), Justinian University calculates its cohort default rate in Section D of the FISAP.

DENOMINATOR: Justinian University determines that **500** students entered repayment in the 2000-2001 award year.

NUMERATOR: Justinian University determines that, of the 500 students who entered repayment in the 2000-2001 award year, **10** defaulted by the end of the 2001-2002 award year (June 30, 2002).

Justinian University divides the numerator by the denominator and multiplies by 100:

$$\textbf{Cohort default rate} = \frac{10}{500} \times 100$$

$$= 2\%$$

**In default cite**
34 CFR 674.5(c)

**240/270-day delinquency example**
If a borrower's loan is in default for at least 240/270 consecutive days and an authorized period of deferment begins after the 239th day past due, the loan would be counted as a default in the school's cohort default rate even if the loan is in a deferred status on June 30.

A loan is still considered in default if the school, its owner, agency, contractor, employee, or any other entity or individual affiliated with the school makes a payment to prevent the borrower from defaulting.

In the case of a student who has attended and borrowed at more than one school, the student and his or her subsequent repayment or default are attributed to the school where the student received the respective loan.

A defaulted loan that has been assigned to the Department is counted in determining a school's cohort default rate if the loan entered repayment during the appropriate time period. Assignments of loans to the Department no longer lower a school's default rate. In addition, the status of a loan that has been assigned to the Department is still considered in default until the loan is paid in full, *even if the borrower has made satisfactory arrangements* to repay the defaulted loan in order to qualify for additional aid from FSA programs.

## Loan not included in cohort default rate

**Loans not included cite**
34 CFR 674.5(c)(3)

The following loans are not treated as defaults in calculating schools' Federal Perkins Loan Program cohort default rates:

- loans on which borrowers have made six consecutive monthly payments;
- loans on which borrowers have "voluntarily[1]" made all payments currently due;
- loans that borrowers have repaid in full;
- loans for which borrowers have received deferments or forbearance based on conditions that began prior to loans becoming 240/270 days past due;
- loans that have been rehabilitated;
- loans repaid in full under a compromise repayment agreement in accordance with 674.33(e); and
- loans that have been discharged due to death or permanent disability, bankruptcy, or a school closing, and
- loans that have been assigned to the Department for determination of eligibility for total and permanent disability discharge.

## Rules for calculating the number of days in default

The following rules are used in calculating the number of days a loan has been in default:

- The 240/270 consecutive days in default is determined by calculating the "age" of the account (that is, the number of consecutive days the oldest dollar is past due).

1. The term "voluntarily" excludes payments obtained by income tax offset, garnishment, income asset execution, or pursuant to a judgment.

- A payment that a borrower makes on a past-due loan is applied to the oldest dollars first, effectively reducing the past-due status.
- A loan on which a borrower is past due and on which the borrower makes an occasional payment but never becomes current could be counted as a defaulted loan for the cohort default rate calculation despite the occasional payments. Because the delinquency is not being cured, the oldest past-due dollar could eventually become 240 days past due, making the loan count in the cohort default rate calculation. However, if the borrower makes enough occasional payments to prevent the oldest past-due dollar from becoming 240 days old, the loan would not be included in the cohort default rate calculation.
- An exception to the 240/270-day threshold will be granted in a case where a borrower (1) would have qualified for a deferment for a period beginning prior to the loan hitting the 240/270-day threshold and (2) failed to file a request for the deferment in a timely manner.

  For such a borrower, the loan's past-due status would be adjusted to reflect the deferment period beginning date. However, the borrower would need to pay any past-due amounts that were due prior to the beginning of the authorized deferment periods, if the deferment period beginning date does not eliminate the loan's entire delinquency.

## PENALTIES FOR HIGH COHORT DEFAULT RATES

If the school's cohort default rate is 25% or higher, the school's FCC will be reduced to zero.

Beginning with the 2000-2001 award year, a school with a cohort default rate of 50% or more for the three most recent years is ineligible to participate in the Federal Perkins Loan Program and must liquidate its loan portfolio.

A school may appeal a determination of ineligibility if the appeal is based on an inaccurate calculation of its cohort default rate or a low number of borrowers entering repayment. A school appeals a determination of ineligibility based on an inaccurate calculation by adjusting the cohort default rate data on the FISAP.

**Applying payment to oldest dollars first example**

Johnny's monthly payment amount is $50. He has made no payments for five months, making the loan 150 days past due. Johnny then makes one $50 payment. Caravello College applies the payment to cover the first month's payment that was overdue, reducing the loan's past-due status from 150 days to 120 days because the earliest past-due payment is now four months old. The calculation of the number of days overdue begins with the oldest dollar past due.

**Occasional payment/never becoming current example**

Kelly's oldest dollar is 120 days past due. She does not make any additional payments for 90 days, making the oldest dollar 210 days past due. Kelly then makes a $50 payment, reducing the past-due status to 180 days. Another 60 days elapse without Kelly making a payment, bringing the oldest dollar to 240 days past due. At that point, the loan would be counted in the school's cohort default rate even if subsequent payments reduce the past-due status to less than 240 days.

**Adjusting past-due status example**

Marty's oldest dollar is 240 days past due. He files a request for a deferment based on the fact that he is attending school and the enrollment period began on the date that the loan became 90 days past due. The past-due status of the loan is reduced to 90 days, and the loan is given a deferment status. This loan is treated as if the 240-day threshold had never been reached. Therefore, it would not be counted in the school's cohort default rate.

**Penalty cite**

34 CFR 674.5(a)

## Cohort Default Rate for multiple locations or change of ownership

If a school has a branch or branches or has an additional location or locations, the school's cohort default rate applies to all branches and locations of the school as they exist on the first day of the award year for which the rate is calculated. The cohort default rate applies to all branches/locations of the school from the date the Department notifies the school of the rate until the Department notifies the school that the rate no longer applies.

If a school changes status from a branch of one school to a freestanding or independent school, the Department determines the cohort default rate based on the school's status as of July 1 of the award year for which the rate is being calculated.

If an independent school becomes a branch of another school or merges with another independent school, the Department determines the cohort default rate based on the combined number of students from both schools who enter repayment during the applicable award year and the combined number of students from both schools who default during the applicable award years. The new rate applies to the new consolidated school and all of its current locations.

If a school changes status from a branch of one school to a branch of another school, the Department determines the cohort default rate based on the combined number of students from both schools who enter repayment during the applicable award year and the combined number of students from both schools who default during the applicable award years from both schools in their entirety.

If a school has a change in ownership that results in a change in control, the Department determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years at the school under both the old and new control.

Cite: *34 CFR 674.5(d)*