

§ 674.38 Deferment procedures.

(a)(1) Except as provided in paragraph (a)(5) of this section, a borrower must request the deferment and provide the institution with all information and documents required by the institution by the date that the institution establishes.

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

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

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

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

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

may request the deferment on behalf of the borrower. An institution that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The institution may also notify the borrower's representative of the outcome of the deferment request.

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

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

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

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

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

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

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

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

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

(d) The institution must determine the continued eligibility of a borrower for a deferment at least annually, except that a borrower engaged in service described in §§ 674.34(e)(6), 674.35(c)(3), 674.36(c)(2), 674.37(c)(2), and § 674.60(a)(1)

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must be granted a deferment for the lesser of the borrower's full term of service in the Peace Corps, or the borrower's remaining period of eligibility for a deferment under § 674.34(e), not to exceed 3 years.

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(Authority: 20 U.S.C. 425, 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988. Redesignated and amended at 59 FR 61410, 61411, Nov. 30, 1994; 64 FR 57531, Oct. 25, 1999; 64 FR 58315, Oct. 28, 1999; 72 FR 61996, Nov. 1, 2007]

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part, except for loans for which a judgment has been secured or loans obtained by fraud for which the borrower has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months and the borrower requests rehabilitation.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

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

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

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

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains the balance of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

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[64 FR 58311, Oct. 28, 1999, as amended at 65 FR 65614, Nov. 1, 2000; 67 FR 67077, Nov. 1, 2002; 71 FR 45698, Aug. 9, 2006]

§ 674.40 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, NDSL, and Perkins loans and only one can be cancelled, the amount due on the uncanceled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

[52 FR 45754, Dec. 1, 1987. Redesignated at 59 FR 61410, Nov. 30, 1994]

Subpart C—Due Diligence

SOURCE: 52 FR 45555, Nov. 30, 1987, unless otherwise noted.

§ 674.41 Due diligence—general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in