

(3) For loans placed with a collection firm on or after July 1, 2008, reasonable collection costs charged to the borrower may not exceed—

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

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

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

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

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

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

(Authority: 20 U.S.C. 424, 1087cc, 1091a)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61412, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58312, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002; 72 FR 61997, Nov. 1, 2007]

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in §674.45 do not result in the repayment of a loan, the institution shall determine at least once every two years whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, NDSL and National Defense Student Loans held by that institution, is more than \$500;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

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(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in §§ 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in § 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, 61415, Nov. 30, 1994; 67 FR 67077, Nov. 1, 2002]

§ 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) 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 institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to § 674.43 to demand payment of overdue amounts on the loan.

(b) *General: Collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with §§ 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to §§ 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount on the past-due payments late charges, and these collection costs, the institution may charge and Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) *Waiver: Late charges.* The institution may waive late charges assessed against a borrower who repays the full

amount of the past-due payments on a loan.

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charges collected.

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

(6) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;