

award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1070b-2, 1087cc, and 1096, 42 U.S.C. 2753)

PART 674—FEDERAL PERKINS LOAN PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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APPENDIX E TO PART 674—EXAMPLES FOR COMPUTING MAXIMUM PENALTY CHARGES (6 MONTHS UNPAID OVERDUE PAYMENTS) ON DIRECT LOANS MADE FOR PERIODS OF ENROLLMENT BEFORE JANUARY 1, 1986

AUTHORITY: 20 U.S.C. 1070g, 1087aa-1087hh; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

Subpart A—General Provisions

SOURCE: 52 FR 45747, Dec. 1, 1987, unless otherwise noted.

§ 674.1 Purpose and identification of common provisions.

(a) The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

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(b)(1) The Federal Perkins Loan Program, authorized by title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan (NDSL) Program, is a continuation of the National Defense Loan Program authorized by title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under title II before the enactment of title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under title IV-E to include the assets of an institution's student loan fund established under title II.

*(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under title IV-E of the HEA or title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, sec. 137(d)(1))

[52 FR 45747, Dec. 1, 1987, as amended at 57 FR 32344, July 21, 1992; 59 FR 61415, Nov. 29, 1994; 64 FR 18002, Apr. 6, 2000]

§ 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

- Academic Competitiveness Grant (ACG) Program
- Academic year
- Award year
- Defense loan
- Enrolled
- Expected family contribution (EFC)
- Federal Family Education Loan (FFEL) programs
- Federal Pell Grant
- Federal Perkins loan
- Federal Perkins Loan Program
- Federal PLUS Program
- Federal SLS Program
- Federal Supplemental Educational Opportunity Grant (FSEOG) Program
- Federal Work-Study (FWS) Program
- Full-time student
- Graduate or professional student
- Half-time student
- HEA
- National Defense Student Loan Program
- National Direct Student Loan (NDSL) Program

- National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
- Payment period
- Secretary
- Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
- TEACH Grant
- Undergraduate student

(b) The Secretary defines other terms used in this part as follows:

Default: 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.

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

Financial need: The difference between a student's cost of attendance and his or her EFC.

Fund (Federal Perkins Loan Fund): A fund established and maintained according to § 674.8.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Federal Perkins loans, Defense loans, and NDSLs made before October 1, 1980, and six months for other Direct loans.

Institution of higher education (institution): A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Making of a loan: When the institution makes the first disbursement of a loan to a student for an award year.

Master Promissory Note (MPN): A promissory note under which the borrower may receive loans for a single award year or multiple award years.

National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Satisfactory repayment arrangement: (1) For purposes of regaining eligibility for grant, loan, or work assistance under title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six on-time, consecutive, voluntary, full monthly payments on a defaulted loan. "On-time" means a payment made within 20 days of the scheduled due date. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

Student loan: For this part means an NDSL Loan, Defense Loan, or a Federal Perkins Loan.

Total monthly gross income: The gross amount of income received by the borrower from employment (either full-

time or part-time) and from other sources.

(Authority: 20 U.S.C. 1070g, 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 52580, Dec. 28, 1988; 57 FR 32344, July 21, 1992; 59 FR 61404, 61415, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 64 FR 58308, Oct. 28, 1999; 65 FR 18002, Apr. 6, 2000; 67 FR 67076, Nov. 1, 2002; 69 FR 12276, Mar. 16, 2004; 71 FR 38003, July 3, 2006; 72 FR 62030, Nov. 1, 2007; 73 FR 35494, June 23, 2008; 78 FR 65804, Nov. 1, 2013]

§§ 674.3–674.4 [Reserved]

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) *FCC reduction.* If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility.* For award year 2000–2001 and succeeding award years, an institution with a cohort default rate that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year, or the remainder of the award year, in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures—(A) Inaccurate calculation.* An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

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(B) *Small number of borrowers entering repayment.* An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary.* The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio.* Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date.* The provisions of paragraph (a)(2) of this section are effective with the cohort default rate calculated as of June 30, 2001.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution 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.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower's default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school;

(D) Repaid in full in accordance with § 674.33(e) or § 674(h); or

(E) Assigned to and conditionally discharged by the Secretary in accordance with § 674.61(b).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

(4) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default

are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary 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 from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary 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 from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in

their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary 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 from the institution under both the old and new control.

(Authority: 20 U.S.C. 1087bb)

[59 FR 61405, Nov. 30, 1994, as amended at 60 FR 61814, Dec. 1, 1995; 64 FR 58308, Oct. 28, 1999; 65 FR 65690, Nov. 1, 2000; 68 FR 75428, Dec. 31, 2003]

§§ 674.6–674.7 [Reserved]

§ 674.8 Program participation agreement.

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

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

(1) FCC received under this subpart;

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

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

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

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

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

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

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

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

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

(1) Making loans to students;

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

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

(4) Litigation costs (see § 674.47);

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

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

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

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

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

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

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

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

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

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without rec-

ompense at the beginning of a repayment period.

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

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

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

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

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

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

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

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

(Authority: 20 U.S.C. 1087cc, 1087cc–1, 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32344, July 21, 1992; 59 FR 61407, 61415, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996; 64 FR 58315, Oct. 28, 1999; 72 FR 61996, Nov. 1, 2007]

§ 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Federal Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR part 668;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

(c) Has financial need as determined in accordance with part F of title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a

course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Federal Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Federal Pell Grant by the institution's financial aid administrator after applying for a SAR with a Federal Pell Grant Processor;

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan is evidence that the student is unwilling to repay the loan;

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that any new Federal Perkins Loan the borrower receives cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

(3) If the borrower receives a new Federal Perkins Loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 674.61(b)(3)(i), 34 CFR 682.402(c), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously discharged loan in accordance with

§ 674.61(b)(5), 34 CFR 682.402(c)(5), or 34 CFR 685.213(b)(4), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(h) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010, the borrower must—

(1) Comply with the requirements of paragraphs (g)(1) and (g)(2) of this section; and

(2) Sign a statement acknowledging that—

(i) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when a new loan is made, unless that impairment substantially deteriorates; and

(ii) Collection activity will resume on any loan in a conditional discharge period.

(i) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period, the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

(j) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are payments made directly by the borrower; and

(2) Voluntary payments do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(k) In the case of a borrower who is in default on an FFEL Program or a

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Direct Loan Program loan, makes satisfactory repayment arrangements as defined in 34 CFR 682.200(b) or 685.102(b) on the defaulted loan, as determined by the loan holder; and

(1) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgment may include, but is not limited to, the borrower—

- (1) Signing a new promissory note or new repayment agreement; or
- (2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)
[52 FR 45747, Dec. 1, 1987, as amended at 59 FR 61407, 61415, Nov. 30, 1994; 60 FR 34167, June 30, 1995; 62 FR 50847, Sept. 26, 1997; 64 FR 58309, Oct. 28, 1999; 65 FR 65690, Nov. 1, 2000; 66 FR 44006, Aug. 21, 2001; 67 FR 67076, Nov. 1, 2002; 71 FR 45697, Aug. 9, 2006; 74 FR 55986, Oct. 29, 2009; 78 FR 65805, Nov. 1, 2013]

§ 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under § 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

(c) The institution shall establish selection procedures and these procedures must be—

- (1) In writing;
- (2) Uniformly applied; and
- (3) Maintained in the institution's files.

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

(Authority: 20 U.S.C. 1087cc and 1087dd)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61407, Nov. 30, 1994; 64 FR 58292, 58315, Oct. 28, 1999]

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§ 674.11 [Reserved]

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and NDSLs an eligible student may borrow is—

(1) \$5,500 for a student who is enrolled in a program of undergraduate education; and

(2) \$8,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and NDSLs received by an eligible student may not exceed—

(1) \$27,500 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) \$60,000 for a graduate or professional student; and

(3) \$11,000 for any other student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

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

[59 FR 61407, Nov. 30, 1994, as amended at 64 FR 58309, Oct. 28, 1999; 74 FR 55660, Oct. 28, 2009]

§ 674.13 Reimbursement to the Fund.

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

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or

should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower even if the institution complied in a timely manner with the due diligence requirements of subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

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

(Authority: 20 U.S.C. 1087dd-1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 59 FR 61407, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000]

§§ 674.14-674.15 [Reserved]

§ 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the

student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

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(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

- (i) As part of the written application material;
- (ii) As part of the promissory note; or
- (iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

Loan amount

N

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or estimated financial assistance amounts during an academic year and needs additional funds in a particular payment period, the institution may disburse loan funds to the student for those uneven costs.

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with 34 CFR 668.164.

(2) The institution shall ensure that each loan is supported by a legally enforceable promissory note as proof of the borrower's indebtedness.

(3) If the institution uses a Master Promissory Note (MPN), the institution's ability to make additional loans based on that MPN will automatically expire upon the earliest of—

- (i) The date the institution receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;
- (ii) Twelve months after the date the borrower signed the MPN if no disbursements are made by the institution under that MPN; or
- (iii) Ten years from the date the borrower signed the MPN or the date the institution receives the MPN, except

that a remaining portion of a loan may be disbursed after this date.

(e) The institution shall advance funds to a student in accordance with the provisions of § 668.164.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

- (i) Officially or unofficially withdraws; or
- (ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

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

- (i) The amount and the date of each disbursement;
- (ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and
- (iii) The date the loan was repaid, canceled, or discharged for any reason.

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

(i) [Reserved]

(j) The institution must report enrollment and loan status information, or any Title IV loan-related information required by the Secretary, to the Secretary by the deadline date established by the Secretary.

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

(Authority: 20 U.S.C. 1987cc, 1087cc-1, 1087dd, 1091 and 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61408, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 34433, June 30, 1995; 60 FR 61814, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 64 FR 58309, Oct. 28, 1999; 67 FR 67076, Nov. 1, 2002; 71 FR 45697, Aug. 9, 2006; 72 FR 61996, 62030, Nov. 1, 2007]

§ 674.17 Federal interest in allocated funds—transfer of Fund.

(a) If an institution responsible for a Federal Perkins Loan fund closes or no

longer wants to participate in the program, the Secretary directs the institution to take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(1) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(2) The assignment of the outstanding loans to the United States.

(b) An institution that assigns outstanding loans under this paragraph relinquishes its interest in those loans.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 59 FR 61415, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 67 FR 67076, Nov. 1, 2002]

§ 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Federal Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under § 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

[52 FR 45747, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992; 59 FR 61408, 61415, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996]

§ 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Federal Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Federal Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* An institution shall maintain the funds it receives under this part in accordance with the requirements in § 668.163.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain

program and fiscal records that are reconciled at least monthly.

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

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

(2) *Loan records.* (i) An institution shall retain a record of disbursements for each loan made to a borrower on a Master Promissory Note (MPN). This record must show the date and amount of each disbursement.

(ii) For any loan signed electronically, an institution must maintain an affidavit or certification regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process in accordance with the requirements of §674.50(c)(12).

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

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

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

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

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order

to enforce the loan, the institution must retain certified true copies of those documents.

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

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format. An original electronically signed MPN must be retained by the institution for 3 years after all the loans made on the MPN are satisfied.

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

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

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

(f) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the institution and who received a loan

under title IV of the HEA has changed his or her permanent address.

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

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 61408, 61415, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 61814, Dec. 1, 1995; 61 FR 60492, Nov. 27, 1996; 62 FR 50847, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999; 67 FR 67076, Nov. 1, 2002; 72 FR 61996, Nov. 1, 2007; 78 FR 65805, Nov. 1, 2013]

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202).

(b) The Secretary 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, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

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

(Authority: 20 U.S.C. 1087aa-1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61415, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999]

Subpart B—Terms of Loans

SOURCE: 52 FR 45754, Dec. 1, 1987, unless otherwise noted.

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only the promissory note that the Secretary provides. The institution may make only nonsubstantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

(2)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) *Provisions of the promissory note—*
(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For NDSLs made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For NDSLs made before October 1, 1980 and Federal Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) For purposes of establishing the beginning of the repayment period for NDSL or Perkins loans, the 6- and 9-month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available

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regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

(D) May begin earlier at the borrower's request; and

(E) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), forbearance (see § 674.33(d)), or deferments (see §§ 674.34, 674.35, and 674.36);

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Federal Perkins Loan or an NDSL Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on an NDSL made for periods of enrollment that began before January 1, 1986 may be—

(1) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of \$1 for the first month and \$2 for each additional month.

(2) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of \$3.

(3) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of \$6. (See appendix E of this part)

(iii) The institution may—

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Federal Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that—

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

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

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

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 61408, 61415, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 62 FR 50848, Sept. 26, 1997; 64 FR 58309, Oct. 28, 1999]

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a nine-month period that includes the date the loan was

made and began on the date the borrower ceased to be enrolled as at least a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

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

[52 FR 45754, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992]

§ 674.33 Repayment.

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

(2) If the last scheduled payment would be \$25 or less the institution may combine it with the next-to-last repayment.

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of \$5, the institution may round that payment to the next highest dollar amount that is a multiple of \$5.

(4) The institution shall apply any payment on a loan in the following order:

- (i) Collection costs.
- (ii) Late charges.
- (iii) Accrued interest.
- (iv) Principal.

(b) *Minimum monthly repayment—(1) Minimum monthly repayment option.* (i) An institution may require a borrower to pay a minimum monthly repayment if—

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more

than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and NDSL or Federal Perkins loans from one or more institutions.* If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, and if the total monthly repayment is less than \$30 and the monthly repayment on a Defense loan is less than \$15 a month, the amount attributed to the Defense loan may not exceed \$15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repay-

ment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is—

(i) \$15 for a Defense loan;

(ii) \$30 for an NDSL Loan or for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) \$40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period—(1) Hardship.* The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

(2) *Low-income individual.* (i) For Federal Perkins loans and NDSLs made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i) (A) or (B) of this section. The term *low-income individual* means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual

whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

(3) Interest continues to accrue during any extension of a repayment period.

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution. The school confirms this agreement by notice to the borrower, and by recording the terms in the borrower's file.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form

of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if—

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(6) Before granting a forbearance to a borrower under paragraph (d)(5)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the most recent total monthly gross income received by the borrower; and

(ii) Evidence showing the amount of the monthly payments owed by the borrower for the most recent month for the borrower's title IV loans.

(7) Interest accrues during any period of forbearance.

(8) The institution may not include the periods of forbearance described in this paragraph in determining the 10-year repayment period.

(e) *Compromise of repayment.* (1) An institution may compromise on the repayment of a defaulted loan if—

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment—

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears

to the institution's capital contribution to the Fund.

(f)(1) *Incentive repayment program.* An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for money lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraphs (f)(1)(i), (ii) and (iii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge—(1) General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) "School" means a school's main campus or any location or branch of the main campus; and

(C) The "holder" means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reim-

bursement of amounts paid voluntarily or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to have been in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* (i) The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(A) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.214 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(B) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(ii) With respect to schools that closed on or after November 1, 2013, the Secretary will discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application from the borrower if the Secretary determines that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to the school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; The school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 600.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means;

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction,

is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.* (i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict

transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 120 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by a school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(vii) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(viii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(ix) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(x) In the case of a loan held by a school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or

collection costs the borrower paid on a loan discharged under this section.

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§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, an NDSL, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is—

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program

for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower of a Federal Perkins loan, an NDSL, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(4) of this section may be granted for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(4) of this section.

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

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

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

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(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

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

(5) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (e)(3) of this section, the institution shall require the borrower to submit a copy of the borrower's Federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(6)(i) For purposes of paragraph (e)(3) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(f)(1) To qualify for a deferment for study as part of a graduate fellowship

program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution with a statement from an authorized official of the borrower's graduate fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (b)(1)(ii) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) *Military service deferment.* (1) The borrower need not pay principal, and interest does not accrue, on a Federal Perkins Loan, an NDSL, or a Defense Loan, for any period during which the borrower is—

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

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

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

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

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

(iii) Any other member of an Armed Force on active duty in connection

with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

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

(4) As used in this paragraph—

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

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

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

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

(6) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(7) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower's representative.

(i) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower of a Federal Perkins loan, an NDSL, or a Defense loan serving on active duty

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military service on that date, or who begins serving on or after that date, need not pay principal, and interest does not accrue for up to 13 months following the conclusion of the borrower's active duty military service and initial grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled, on at least a half-time basis, in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (i)(1) of this section "Active duty" means active duty as defined in section 101(d)(1) of title 10, United States Code, for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which the Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which the Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status, on at least a half-time basis, during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status, on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment under

both paragraphs (h) and (i) of this section, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(j) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), (g), (h), and (i) of this section and the period described in paragraph (k) of this section in determining the 10-year repayment period.

(k) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), (g), and (h) of this section.

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§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the

borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see §674.59);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer (see §674.60);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see §674.60);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) 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.

(ii) 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.

(iii) 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 health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training.

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

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(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health-care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than \$1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is nec-

essary to avoid hardship to the borrower (see § 674.33(c)).

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section when determining the 10-year repayment period.

(i) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

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

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 1652, Jan. 12, 1994. Redesignated and amended at 59 FR 61410, 61411, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999]

§ 674.36 Deferment of repayment—NDSLs made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on an NDSL Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see §674.59);

(2) A Peace Corps volunteer (see §674.60);

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see §674.60).

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) 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.

(ii) 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.

(iii) 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 health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a quali-

fied physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see §674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), and (e) of this section and the period described in

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paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

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

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**§ 674.37 Deferment of repayment—
NDSLs made before October 1, 1980
and Defense loans.**

(a) A borrower may defer repayment—

(1) On an NDSL made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends

on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.59);

(2) A Peace Corps volunteer (see § 674.60); or

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.60).

(d) The institution shall exclude the deferment periods described in paragraphs (b), (c), and (e) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

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

[52 FR 45754, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992; 59 FR 1652, Jan. 12, 1994. Redesignated at 59 FR 61410, Nov. 30, 1994, as amended at 62 FR 50848, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999]

§ 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) 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—

(i) Requests rehabilitation; and

(ii) Makes a full monthly payment— as determined by the institution— within 20 days of the due date, each month for 9 consecutive months.

(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 nine 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; 74 FR 55661, Oct. 28, 2009; 78 FR 65805, Nov. 1, 2013]

§ 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 this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower.

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the

borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

(b) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

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

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61411, Nov. 30, 1994; 64 FR 58312, Oct. 28, 1999]

§ 674.42 Contact with the borrower.

(a) *Disclosure of repayment information.* The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge, the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information:

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

(11) An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the institution if he or she wants the minimum monthly payment determination to be based on payments due to other institutions.

(b) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the institution approves for credit, the borrower may be provided with written counseling material by mail within 30 days after the borrower completes the program. If a borrower withdraws from the institution without the institution's prior knowledge or fails to complete an exit counseling session as required, the

institution must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from the institution or failed to complete exit counseling as required.

(2) The exit counseling must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at the institution or in the borrower's program of study;

(ii) Explain to the borrower the options to prepay each loan and pay each loan on a shorter schedule;

(iii) Review for the borrower the option to consolidate a Federal Perkins Loan, including the consequences of consolidating a Perkins Loan. Information on the consequences of loan consolidation must include, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan or to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(iv) Include debt-management strategies that are designed to facilitate repayment;

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

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

(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(viii) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, has not completed the program within the regular

time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or did not receive educational or other services that the borrower purchased from the institution;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Require the borrower to provide current information concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer;

(xi) Review for the borrower information on the availability of the Student Loan Ombudsman's office;

(xii) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information; and

(xiii) A general description of the types of tax benefits that may be available to borrowers.

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

(4) The institution must maintain documentation substantiating the institution's compliance with this section for each borrower.

(c) *Contact with the borrower during the initial and post deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (NDSLs made before October 1, 1980 and Federal Perkins loans), the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

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(Authority: U.S.C. 424, 1087cc, 1087cc-1)

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§ 674.43 Billing procedures.

(a) The term *billing procedures*, as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment;

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to §674.47(a), the institution may assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

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(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with § 674.31(b)(5) (See appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to

seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing 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.

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

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

[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; 64 FR 58315, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

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

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, Nov. 30, 1994]

§ 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand

letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the account as being in default to any one national credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—

(i) Litigate in accordance with the procedures in § 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in § 674.50.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in

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paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

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

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

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

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

(3) 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.

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(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

(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

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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;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(7) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

(f) *Records.* For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in §674.19.

(g) *Cessation of collection activity of defaulted accounts.* An institution may cease collection activity on a defaulted account with a balance of less than \$200, including outstanding principal,

accrued interest, collection costs, and late charges, if—

(1) The institution has carried out the due diligence procedures described in subpart C of this part with regard to this account; and

(2) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.

(h) *Write-offs of accounts.* (1) Notwithstanding any other provision of this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—

(i) Less than \$25; or

(ii) Less than \$50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with §674.43(a).

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

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

[52 FR 45555, Nov. 30, 1987, as amended at 57 FR 32346, July 21, 1992; 57 FR 60706, Dec. 21, 1992; 59 FR 61412, Nov. 30, 1994; 60 FR 61815, Dec. 1, 1995; 64 FR 58313, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection

matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under § 674.43, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount it receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—

(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out § 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than \$100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid

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over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than \$100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

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

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999]

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

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

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

(2) In the case of a bankruptcy proceeding under either Chapter 7 or Chapter 13 of the Bankruptcy Code in which the repayment plan proposes that the borrower repay less than the full amount owed on the loan, the institu-

tion has an authoritative determination by an appropriate State official that in the opinion of the State official, the institution is an agency of the State and is, on that basis, under applicable State law, immune from suit.

(c) *Borrower's request for determination of dischargeability.* (1) The institution must use due diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) *Request for determination of non-dischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m), and

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(C) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m)) before the filing of the petition; and

(C) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

(g) *Termination of collection and write-off.* (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

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

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§ 674.50 Assignment of defaulted loans to the United States.

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

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

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

(3) The loan has been accelerated.

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

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

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

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

(3) A copy of the repayment schedule.

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

(5) A complete statement of the payment history.

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

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

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

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

(10) Documentation that the institution has complied with all of the due diligence requirements described in

paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(1) A record of disbursements for each loan made to a borrower on an MPN that shows the date and amount of each disbursement.

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

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

(B) Testimony by an authorized official or employee of the institution, if necessary, to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The affidavit or certification in paragraph (c)(12)(i)(A) of this section must include, if requested by the Secretary—

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

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

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

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

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

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

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

(iv) As long as any loan made to a borrower under a MPN created by an institution is not satisfied, the institution is responsible for ensuring that all parties entitled to access to the electronic loan record, including the Secretary, have full and complete access to the electronic loan record.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower, unless the loan was made before September 13, 1982;

(2) The borrower has received a discharge in bankruptcy, unless—

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

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

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

(f)(1) The Secretary provides an institution written notice of the acceptance

of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

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

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

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

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

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

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

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

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32347, July 21, 1992; 57 FR 60707, Dec. 21, 1992; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000; 67 FR 67077, Nov. 1, 2002; 72 FR 61997, Nov. 1, 2007; 78 FR 65805, Nov. 1, 2013]

Subpart D—Loan Cancellation

SOURCE: 52 FR 45758, Dec. 1, 1987, unless otherwise noted.

§ 674.51 Special definitions.

The following definitions apply to this subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education*: (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education*: A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Title I Children*: Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Child with a disability*: A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations*: A defender organization established in accordance with section 3006A(g)(2)(B) of title 18, United States Code.

(f) *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.

(g) *Educational service agency*: A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Elementary school*: A school that provides elementary education, including education below grade 1, as determined by—

- (1) State law; or
- (2) The Secretary, if the school is not in a State.

(i) *Faculty member at a Tribal College or University*: An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head.

(j) *Federal public defender organization*: A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter*: A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

- (1) Providing community disaster support and, as a first responder, providing emergency medical services;
- (2) Conducting search and rescue; or
- (3) Providing hazardous materials mitigation (HAZMAT).

(l) *Handicapped children*: Children of ages 3 through 21 inclusive who require special education and related services because they are—

- (1) Individuals with intellectual disabilities;
- (2) Hard of hearing;
- (3) Deaf;
- (4) Speech and language impaired;
- (5) Visually handicapped;
- (6) Seriously emotionally disturbed;
- (7) Orthopedically impaired;
- (8) Specific learning disabled; or
- (9) Otherwise health impaired.

(m) *High-risk children*: Individuals under the age of 21 who are low-income or 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.

(n) *Infant or toddler with a disability*: An infant or toddler from birth to age 2, inclusive, who needs early intervention services for specified reasons, as defined in section 632(5)(A) of the Indi-

viduals with Disabilities Education Act.

(o) *Librarian with a master's degree*: A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(p) *Local educational agency*: (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(q) *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.

(r) *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.

(s) *Nurse*: A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

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

(u) *Secondary school*: (1) A school that provides secondary education, as determined by—

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(i) State law; or
(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(v) *Speech language pathologist with a master's degree*: An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(w) *State education agency*: (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(x) *Substantial gainful activity*: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

(y) *Teacher*: (1) A teacher is a person who provides—

- (i) Direct classroom teaching;
- (ii) Classroom-type teaching in a non-classroom setting; or
- (iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

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

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual 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 the services provided by the individual are part of the educational curriculum for handicapped children:

- (i) Speech and language pathology and audiology;
- (ii) Physical therapy;

(iii) Occupational therapy;
(iv) Psychological and counseling services; or

(v) Recreational therapy.

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

(aa) *Total and permanent disability*: The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

- (i) Can be expected to result in death;
- (ii) Has lasted for a continuous period of not less than 60 months; or
- (iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(bb) *Tribal College or University*: An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

[52 FR 45758, Dec. 1, 1987, as amended at 59 FR 61412, Nov. 30, 1994; 65 FR 65690, Nov. 1, 2000; 74 FR 55661, Oct. 28, 2009; 82 FR 31913, July 11, 2017]

§ 674.52 Cancellation procedures.

(a) *Application for cancellation*. To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b) *Part-time employment*. (1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall

grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Break in service.* (1) If the borrower is unable to complete an academic year of eligible teaching service due to a condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*), the borrower still qualifies for the cancellation if—

(i) The borrower completes one half of the academic year; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for purposes of salary increases, tenure, and retirement.

(2) If the borrower is unable to complete a year of eligible service under §§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA, the borrower still qualifies for the cancellation if the borrower completes at least six consecutive months of eligible service.

(d) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for discharge on account of the death or disability of the borrower, or, if the borrower is the spouse of an eligible public servant as defined in

§ 674.64(a)(1), on account of the death or disability of the borrower's spouse, without regard to the repayment status of the loan.

(e) *Concurrent deferment period.* The Secretary considers a Perkins Loan, NDSL or Defense Loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation under §§ 674.53, 674.56, 674.57, or 674.58 is granted.

(f) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

(g) *Switching cancellation categories.* A borrower who qualifies for a cancellation under one of the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59 receives cancellation of 15 percent of the original principal for the first and second years of qualifying service, 20 percent of the original principal for the third and fourth years of qualifying service, and 30 percent of the original principal for the fifth year of qualifying service. If, after the first, second, third, or fourth complete year of qualifying service—

(1) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.53, 674.56, 674.57, or 674.59, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category; or

(2) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.58 or 674.60, the borrower's cancellation rate progression under the new cancellation

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category begins at the year one cancellation rates specified in §§ 674.58(b) or 674.60(b), respectively.

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

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

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61413, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58313, Oct. 28, 1999; 72 FR 55053, Sept. 28, 2007; 78 FR 65805, Nov. 1, 2013]

§ 674.53 Teacher cancellation—Federal Perkins, NDSL and Defense loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1)(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or an NDSL made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(iii) An institution must cancel up to 100 percent of the outstanding balance of a Federal Perkins, NDSL, or Defense loan for teaching service that includes August 14, 2008, or begins on or after that date, at an educational service agency.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of title I children.

(3) For each academic year, the Secretary notifies participating institutions of the schools and educational service agencies selected under paragraph (a) of this section.

(4)(i) The Secretary selects schools and educational service agencies under

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paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency must base its ranking of the schools and educational service agencies on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools and educational service agencies.

(5) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(6) A teacher, who performs service in a school or educational service agency that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school or educational service agency and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(7) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An institution must cancel up to 100 percent of the outstanding balance

on a borrower's Federal Perkins, NDSL, or Defense loan for a borrower's service that includes August 14, 2008, or begins on or after that date, as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in an educational service agency.

(c) *Cancellation for full-time teaching in fields of expertise.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a), (b), or (c) of this section, a borrower must teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system or an educational service agency only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee)

[59 FR 61413, Nov. 30, 1994, as amended at 64 FR 58313, Oct. 28, 1999; 74 FR 55662, Oct. 28, 2009]

§ 674.54 [Reserved]

§ 674.55 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

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(3) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(4) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(5) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(6) [Reserved]

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the

students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3))

[52 FR 45758, Dec. 1, 1987. Redesignated and amended at 59 FR 61413, 61414, Nov. 30, 1994]

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

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

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

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 632 of the Individuals with Disabilities Education Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(d) *Cancellation for full-time employment as a firefighter to a local, State, or Federal fire department or fire district.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time firefighter.

(e) *Cancellation for full-time employment as a faculty member at a Tribal College or University.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time faculty member at a Tribal College or University.

(f) *Cancellation for full-time employment as a librarian with a master's degree.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for serv-

ice that includes August 14, 2008, or begins on or after that date, as a full-time librarian, provided that the individual—

(i) Is a librarian with a master's degree; and

(ii) Is employed in an elementary school or secondary school that is eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; or

(iii) Is employed by a public library that serves a geographic area that contains one or more schools eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(2) For the purposes of paragraph (f) of this section, the term *geographic area* is defined as the area served by the local school district.

(g) *Cancellation for full-time employment as a speech pathologist with a master's degree.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for full-time employment that includes August 14, 2008, or begins on or after that date, as a speech pathologist with a master's degree who is working exclusively with schools eligible for funds under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section, a borrower must work full-time for 12 consecutive months.

(2) [Reserved]

(Authority: 20 U.S.C. 1087ee)

[59 FR 61414, Nov. 30, 1994, as amended at 64 FR 58314, Oct. 28, 1999; 72 FR 61997, Nov. 1, 2007; 74 FR 55662, Oct. 28, 2009]

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, NDSL, and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

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(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL, or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is publicly-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(4) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(5) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(6) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(7) The agency must be able to document the employee's functions.

(8) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b) An institution must cancel up to 100 percent of the outstanding balance of a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time attorney employed in Federal public defender organizations or community defender organizations, established in accordance with section 3006A(g)(2) of title 18, U.S.C.

(c)(1) To qualify for cancellation under paragraph (a) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

[74 FR 55663, Oct. 28, 2009]

§ 674.58 Cancellation for service in an early childhood education program.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's NDSL or Federal Perkins loan, for service as a full-time staff member in a Head Start program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a Head Start program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An institution must cancel up to 100 percent of the outstanding balance of a borrower's NDSL, Defense, or Federal Perkins loan for service that includes August 14, 2008, or begins on or after that date, as a full-time staff member of a pre-kindergarten or childcare program that is licensed or regulated by the State.

(4) The Head Start, pre-kindergarten or child care program in which the borrower serves must operate for a complete academic year, or its equivalent.

(5) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start, pre-kindergarten or child care program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the

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interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) “Head Start” is a preschool program carried out under the Head Start Act (subchapter B, chapter 8 of title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) A pre-kindergarten program is a State-funded program that serves children from birth through age six and addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development.

(3) A child care program is a program that is licensed or regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents’ work.

(4) “Full-time staff member” is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start, pre-kindergarten or child care program.

(Authority: 20 U.S.C. 425)

[52 FR 45758, Dec. 1, 1987. Redesignated and amended at 59 FR 61413, 61415, Nov. 30, 1994; 64 FR 58314, Oct. 28, 1999; 74 FR 55663, Oct. 28, 2009]

§ 674.59 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution must cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower’s full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of an NDSL or Perkins loan.* (1) An institution must cancel up to 50 percent of the outstanding balance on an NDSL or Perkins loan for active duty service that ended before August 14, 2008, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(c)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower’s Federal Perkins or NDSL loan for a borrower’s full year of active duty service that includes August 14, 2008, or begins on or after that date, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) The cancellation rate is 15 percent for the first and second year of qualifying service, 20 percent for the third and fourth year of qualifying service, and 30 percent for the fifth year of qualifying service.

(d) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 1087ee)

[52 FR 45758, Dec. 1, 1987. Redesignated at 59 FR 61413, Nov. 30, 1994; 74 FR 55664, Oct. 28, 2009]

§ 674.60 Cancellation for volunteer service—Perkins loans, NDSLs and Defense loans.

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on an NDSL or Defense loan for service as a volunteer under The Peace Corps

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Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee)

[52 FR 45758, Dec. 1, 1987, as amended at 57 FR 32347, July 21, 1992. Redesignated at 59 FR 61413, Nov. 30, 1994, as amended at 64 FR 58314, Oct. 28, 1999]

§ 674.61 Discharge for death or disability.

(a) *Death.* (1) An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Federal Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) 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 of the borrower's death.

(b) *Total and permanent disability as defined in § 674.51(aa)(1).* (1) *General.* (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently dis-

abled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements in this section.

(ii) For purposes of paragraph (b) of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1); or

(B) A Social Security Administration (SSA) notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date—

(A) The physician certified the borrower's application; or

(B) The Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of

the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

(vi) If the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of

the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or on or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary

grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(6)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary; and

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(8) *Payments received after the physician's certification of total and permanent disability.* (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the

sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(c) *Total and permanent disability discharges for veterans.* (1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in §674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in §674.51(aa)(2).* (i) If a veteran notifies the institution that the veteran claims to be totally and permanently disabled as defined in §674.51(aa)(2), the institution must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge to the Secretary; and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the veteran's title IV loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans.

(iv) The veteran must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veteran Affairs showing that the Department of Veteran Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(2)(iv) and (c)(2)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans that the Secretary has received a total and permanent disability discharge application from the veteran.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(x) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower has a total and permanent disability as defined in §674.51(aa)(2) to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the veteran's

completed application, the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), the Secretary notifies the veteran and the veteran's lenders that the application for disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each institution holding a Direct, NDSL, or Perkins Loan made to the veteran to discharge the loan.

(ii) The institution returns any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.

(iii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in §674.51(aa)(2), the Secretary notifies the veteran or the veteran's representative, and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) An explanation that the institution will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent

disability discharge in accordance with the procedures described in paragraphs (b)(1) through (b)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), but indicates that the veteran may be totally and permanently disabled as defined in §674.51(aa)(1).

(d) *No Federal reimbursement.* No Federal reimbursement is made to an institution for discharge of loans due to death or disability.

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

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

(Authority: 20 U.S.C. 425, 1070g, 1087dd; sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988. Redesignated and amended at 59 FR 61413, 61415, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65690, Nov. 1, 2000; 66 FR 44007, Aug. 21, 2001; 72 FR 61998, Nov. 1, 2007; 73 FR 35494, June 23, 2008; 73 FR 36793, June 30, 2008; 74 FR 55664, Oct. 28, 2009; 74 FR 55987, Oct. 29, 2009; 77 FR 66125, Nov. 1, 2012; 81 FR 76078, Nov. 1, 2016; 84 FR 65007, Nov. 26, 2019]

§ 674.62 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

[52 FR 45758, Dec. 1, 1987. Redesignated at 59 FR 61413, Nov. 30, 1994]

§ 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of

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the principal and interest canceled under §§ 674.55 and 674.59(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for NDSL and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

[52 FR 45758, Dec. 1, 1987. Redesignated and amended at 59 FR 61413, 61415, Nov. 30, 1994]

§ 674.64 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(3) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Penn-

sylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(4) *Immediate aftermath* means, for an eligible public servant, the period of time from the aircraft crashes until 96 hours after the crashes.

(5) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from

the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) *September 11 survivors discharge.* (1) The obligation of a borrower to make any further payments on an eligible Defense, NDSL, or Perkins Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) A Defense, NDSL, or Perkins Loan owed by the spouse of an eligible public servant may be discharged under the procedures for a discharge in paragraphs (b)(3) through (b)(6) of this section.

(3) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, an institution shall suspend collection activity on the borrower's eligible Defense, NDSL, and Perkins Loans and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(4) If the institution determines that the borrower does not qualify for a discharge under this section, or the institution does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the institution that the borrower claims to qualify for a discharge, the institution shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the institution was notified by the borrower. The institution must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the institution will resume collection on the loan.

(5) If the institution determines that the borrower qualifies for a discharge under this section, the institution shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan. The institution shall return to the sender any payments received by the institution after the date the loan was discharged.

(6) A Defense, NDSL, or Perkins Loan owed by an eligible public servant may be discharged under the procedures in §674.61 for a discharge based on the death or total and permanent disability of the eligible public servant.

(c) *Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001.*

(1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (c)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the eligible public servant owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender,

the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Program Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraphs (c)(1) through (c)(3) of this section.

(5) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief financial officer of the institution.

(d) *Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.*

(1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraph (d)(1) of this section.

(e) *Additional information.* (1) An institution may require the borrower to submit additional information that the institution deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant at the site.

(3) To establish that the disability of the eligible public servant is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

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(iii) Copies of approved joint FFEL or Federal Direct Consolidation loan applications.

(f) *Limitations on discharge.* (1) Only outstanding Defense, NDSL, and Perkins Loans for which amounts were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Defense, NDSL, or Perkins Loans prior to the date the loan was discharged.

(3) A determination by an institution that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist at-

tacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant for a discharge based on a total and permanent disability under §674.61.

(4) The spouse of an eligible public servant may not receive a discharge under this section if the eligible public servant has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[71 FR 78078, Dec. 28, 2006, as amended at 72 FR 55053, Sept. 28, 2007]

APPENDIXES A–D TO PART 674
[RESERVED]

APPENDIX E TO PART 674—EXAMPLES FOR COMPUTING MAXIMUM PENALTY CHARGES (6 MONTHS UNPAID OVERDUE PAYMENTS) ON DIRECT LOANS MADE FOR PERIODS OF ENROLLMENT BEFORE JANUARY 1, 1986

Monthly repayment schedule	Installment due dates—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	\$1						\$1
2nd Past due installment		\$1 + \$2					3
3rd Past due installment			\$3 + \$2				5
4th Past due installment				\$5 + \$2			7
5th Past due installment					\$7 + \$2		9
6th Past due installment						\$9 + \$2	11
Cumulative maximum sub-totals	1	4	9	16	25	36	

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bi-monthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	\$3			\$3
2nd Past due installment		\$3 + \$3		6
3rd Past due installment			\$6 + \$3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	\$6		\$6
2nd Past due installment		\$6 + \$6	12
Cumulative maximum subtotals	6	18	

NOTE. In the above table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: \$16 to the monthly repayment schedule borrower; \$9 to the bimonthly repayment schedule borrower; and \$18 to the quarterly repayment schedule borrower.

[46 FR 5241, Jan. 19, 1981]