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Introduction

Campus Partners is committed to supplying its customers and employees with the most accurate and comprehensive literature possible on the regulations governing student loans. That commitment is rooted in two objectives: to ensure that you comply with regulations; and to ensure that Campus Partners complies because of the joint liability imposed by third-party servicer regulations.

Third-party servicer regulations published in 1994 introduced a new level of accountability for institutions and loan servicers.

According to General Provisions, Sec. 668.25(c)(3) of these regulations, institutions and third-party servicers are "jointly and severally liable" for complying with federal regulations governing all Title IV-Higher Education Act (HEA) programs. Failure to comply with the regulations can result in a maximum fine of \$25,000 each to the institution and third-party servicer for each occurrence.

The implementation of the third-party servicer regulations forced all loan servicers to become better versed in the intricate student loan regulations, and Campus Partners' Federal Regulations Manual sprung from a need to maintain a team of employees with a superior understanding of evolving federal regulations.

This manual contains Federal Perkins regulations as of January 2004. The *Insight* and *Campus Partners provides* sections were added to provide you with information to help you understand and apply what is written as easy as possible.

This manual can serve as a deskbook for the individual new to regulations; it also can serve as a reference for the more experienced employee who needs to keep up with the dynamic world of student loans.

How to use this manual

Format: ★ This manual follows the format of the federal regulations.

674.xx Section

(a) paragraph

(1) subparagraph

(i) clause

(A) subclause

For example, the text included in this manual will refer to "paragraph (a)," meaning the first point of the particular section.

- ★ The header in each section provides you with a general road map for maneuvering through this manual.

Subpart: Name always appears next to page number.

Page #: Page numbers correspond with each section as follows:

1-99 Introduction

100-199 Subpart A — General Provisions

200-299 Subpart B — Terms of Loans

300-399 Subpart C — Due Diligence

400-499 Subpart D — Loan Cancellation

A – F Appendix

- ★ The footer in each section provides you with a specific road map for maneuvering through this manual.

The section number appears at the bottom left of each page (674.xx). The publication or revision date appears to the right.

Type: This edition (**January 2004**) includes final regulations published November 1, 2002. Amendments from December 2003 are highlighted. The highlighting indicates the changes and redesignations.

★ **674.xx** **Section title**

Shading of the section number only on the first page of the section designates that the section has been renumbered. (The previous section number should appear in the *Insight* section that follows.)

★ **674.xx** **Section title**

Shading of the section title only on the first page of the section designates the section has been renamed. The section number remained the same.

★ (a) Shading of an entire paragraph (but not the paragraph letter or number) designates that the text has been revised.

★ (a) (1) Shading of an entire paragraph and its letter or number designates that the text has been added.

★ (a) (1) (i) Shading of a paragraph or clause number or letter only designates that the paragraph or clause has been renumbered.

★ **674.xx** **Section title**

(a) (1) (i) Shading of an entire section (including section title, all outline numbers and letters and text) designates a new section.

Features: ★ The **Table of Contents** lists all sections of the Federal Regulations Manual. It is divided by subparts.

★ The **Appendix** contains additional information about topics discussed in the regulations.

- ★ The ***Insight*** sections throughout the manual provide additional information about many topics. Notice the small arrow preceding *Insight*. The arrow is a reminder that what appears in the *Insight* usually refers to the text that precedes it. Look at the *Insight* for quick summaries of the provisions and references to related material. For example:

➤ ***Insight:*** *This section was formerly Postponement of Loan Repayment - Loans Made before July 1, 1993.*

- ★ The ***Campus Partners provides*** sections detail the services that Campus Partners provides to comply with a regulation. Notice the small arrow preceding *Campus Partners provides*. The arrow is a reminder to look inside to see what Campus Partners does for your institution. Look at the *Campus Partners provides* for computer-system capabilities, reports listings and other service offerings. For example:

➤ ***Campus Partners provides:***

To assist schools in returning paid-in-full promissory notes, Campus Partners can provide mailing labels to match the Paid Out/Credit Balance/Write-Off Report.

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.
- (b)
 - (1) The Federal Perkins Loan Program authorized by Title IV-E of the Higher Education Act of 1965 and previously named the National Direct Student Loan Program is a continuation of the National Defense Student 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.

674.2 Definitions.

- (a)* Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year

Award year

Defense loan

Direct loan

Enrolled

Expected Family Contribution (EFC)

Federal Family Education Loan (FFEL) Program

Federal Pell Grant Program

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

HEA

National Defense Student Loan Program

National Direct Student Loan (NDSL) Program

Payment Period

Secretary

▲ **Insight:**

For your convenience, we have reproduced below some key definitions from General Provisions, section 668.2:

- *Defense Loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act.*
- *Direct Loan: A loan made under Title IV-E of the Higher Education Act (HEA) after June 30, 1972.*
- *Federal Perkins Loan: A loan made under Title IV-E of the HEA July 1, 1987 or after to an individual who, on July 1, 1987, had no outstanding balance of principal or interest owing on a loan previously made under Title IV-E of the HEA.*

- (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 Sec. 674.8.

Graduate or professional student: A student who--

- (1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;
- (2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and
- (3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time student. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

- (1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester or quarter system.
- (2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.
- (3) 12 clock hours per week for an institution using clock hours.
- (4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

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 Direct loans 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 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: 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 (6) on-time, consecutive, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once on a student loan.

Student loan: For this part means a Direct 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.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

▲ **Insight:** *A student who already has earned a baccalaureate or first professional degree still can enroll in an undergraduate course of study.*

➤ **Campus Partners provides:**

Campus Partners' System IIISM includes separate status codes to identify undergraduate students (Code 10) and graduate students (Code 11) who are enrolled at the lending institution.

674.3 [Removed and Reserved November 27, 1996.]

674.4 [Removed and Reserved November 27, 1996.]

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.
 - (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 Sec. 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 Sec. 674.33(e) or Sec. 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.

▲ Insight: *Borrowers may regain eligibility for additional Title IV aid by meeting one of the above requirements to be removed from the institution's default rate.*

- (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 of 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.

674.6 [Removed and Reserved October 28, 1999.]

674.7 [Removed and Reserved October 28, 1999.]

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 unto 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;
- ▲ Insight:** *Sec. 674.7 refers to the Expanded Lending Option (ELO). However, the ELO was eliminated in the 1998 Amendments, and the section has been removed and reserved.*
- (4) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;
 - (5) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;
 - (6) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and
 - (7) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.
- (b) The institution shall use the money in the Fund only for—
 - (1) Making loans to students;
 - (2) Administrative expenses as provided for in 34 CFR 673.7;

-
- (3) Capital distributions provided for in section 466 of the Act;
 - (4) Litigation costs (see Sec. 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 Sec. 674.47); and
 - (6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.
- (c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes–
- (1) For institutions in which 30 or more of its current or former students first entered repayment in an award year–
 - (i) The total number of borrowers who first entered repayment in the award year; and
 - (ii) The number of those borrowers in default by the end of the following award year; or
 - (2) For institutions in which less than 30 of its current or former students entered repayment in an award year–
 - (i) The total number of borrowers who first entered repayment in any of the three most recent award years; and
 - (ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.
- (d) (1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or
- (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.
- (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.

▲ Insight: *Section 463A of the HEA outlines under paragraph (a) the information a school must provide to borrowers before making a disbursement. Paragraph (b) outlines the information to be provided before repayment.*

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 668.32;

▲ Insight: 34 CFR 668 is General Provisions. Section 668.32 outlines the conditions under which a student is eligible to borrow Title IV funds.

- (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;

▲ Insight: Part F of Title IV of the HEA, referenced in paragraph (c) above, provides Need Analysis regulations.

- (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 Pell Grant by the institution's financial aid administrator after applying for a SAR with a 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;

▲ Insight: Loans discharged in bankruptcy no longer can preclude the borrower from being eligible to receive Title IV aid.

- (f) Provides to the institution a driver's license number, if any, at the time of application for the loan;
- (g)
 - (1) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and
 - (2) Signs a statement acknowledging that any new Federal Perkins or Direct loan the borrower received cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates; and
 - (3) In the case of a borrower whose previous loan under title IV of the HEA was discharged due to a total and permanent disability on or after July 1, 2001 and before July 1, 2002, meets the requirements of (g)(1) and (g)(2) of this section. If the borrower receives another loan within three years from the date the borrower became totally and permanently disabled, as certified by the physician, the borrower must reaffirm the previously discharged loan; and
- (h) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged based on an initial determination that the borrower was totally and permanently disabled, 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, as described in Sec. 674.61(b)(9).
- (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 described in Secs. 674.61(b), 682.402(c), or 685.213(a), 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 Sec. 674.5(c)(3)(i) or (ii) except that—

- (1) For the purposes of this section, voluntary payments made by the borrower under paragraph (h) of this section are those payments made directly by the borrower; and
- (2) Voluntary payments do not include payments obtained by Federal offset, garnishment, income or asset execution.
- (k) For purposes of this section, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement 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.

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 Sec. 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.

674.11 [Reserved.]

674.12 Loan maximums.

- (a) The maximum annual amount of Federal Perkins loans and Direct loans an eligible student may borrow in any academic year is–
 - (1) \$4,000 for a student who is enrolled in a program of undergraduate education; and
 - (2) \$6,000 for a graduate or professional student.
- (b) The aggregate unpaid principal amount of all Federal Perkins loans and Direct loans received by an eligible student may not exceed–
 - (1) \$20,000 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) \$40,000 for a graduate or professional student; and
 - (3) \$8,000 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.

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

➤ *Campus Partners provides:*

Overawards reimbursed to the Fund may be established in an institutional program on System III to assist institutions in collecting these funds.

- (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.

674.14 [Removed and Reserved November 27, 1996.]

674.15 [Removed and Reserved November 27, 1996.]

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.

-
- (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:
- $$\frac{\text{Loan amount}}{N}$$
- 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 resources during an academic year and needs additional funds in a particular payment period, the institution may advance 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 Sec. 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 Sec. 668.164.

▲ **Insight:** See Appendix B-11 – B-15 for Sec. 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) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Federal Perkins Loan Program is less the \$501.
- (h) 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.
- (i) (1) An institution must report to at least one national credit bureau–
- (i) The amount and the date of each disbursement;
 - (ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and
 - (iii) The date the loan was repaid, canceled, or discharged for any reason.
- (2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

➤ **Campus Partners provides:**

As soon as loans are made to students, the institution can send the new loans or advances to Campus Partners on paper documents, by magnetic tape, via FTP Transfer, or on-line through Campus Partners DataLinkSM. After the loans have been posted, the school will receive the New Loans and Advances Report in batch format to reconcile with its records.

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.

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 Sec. 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.

▲ **Insight:** This provision allows institutions to transfer a total of 25 percent; **not** 25 percent for each program.

- (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 the 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 Sec. 674.19(d).

▲ **Insight:** Sec. 674.19 is Fiscal Procedures and Records. Paragraph (d) outlines the record-keeping and reporting requirements.

- (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.

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 Federal Perkins Loan Fund.** An institution shall maintain the funds it receives under this part in accordance with the requirements in Sec. 668.163.

<p>▲ <i>Insight:</i> See Appendix B-9 – B10 for Sec. 668.163.</p>

- (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.

▲ **Insight:** See Appendix B-1 – B5 for Sec. 668.24.

(2) **Loan records.**

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

➤ **Campus Partners provides:**

System III maintains a complete chronological history of all transactions, including:

1. *Payment application;*
2. *Contacts with the borrowers;*
3. *Deferments and cancellations; and*
4. *Changes of address, etc.*

This history is available with DataLink, Campus Partners' on-line system or can be printed for schools that do not use DataLink.

(3) **Period of retention of repayment records.**

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

➤ ***Campus Partners provides:***

Correspondence and forms processed by Campus Partners are stored on microfilm for permanent retention. The original forms (deferment and cancellation requests) are sent to the institution biweekly.

(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.

▲ ***Insight:*** *Changes in the regulations require the use of new promissory notes on various dates. See Appendix F-1 – F-4 for a list of Key Dates.*

- (i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.
- (ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format.
- (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.

➤ ***Campus Partners provides:***

The Paid Out/Credit Balance/Write-Off Report is provided to assist schools in the process of returning paid-in-full notes to the borrowers. To assist schools in returning paid-in-full promissory notes, Campus Partners can provide mailing labels to match the Paid Out/Credit Balance/Write-Off Report.

Campus Partners' reports are available on microfiche, on CD-ROM, or can be viewed on-line.

The offices of Campus Partners have secured access. Access to loan records on the on-line system is controlled by security levels, passwords and identification numbers.

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.

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.

▲ Insight: Refer to Appendix F-1 – F-4 for Key Dates on which provisions affected promissory notes.

- (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 Sec. 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 Sec. 674.32, the promissory note must state that the repayment period–

▲ Insight: Section 674.32 outlines the special terms that apply to loans made to less-than-half-time students.

- (A) For Direct loans 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 Direct loans made before October 1, 1980, and Federal Perkins loans, begins 9 months after the borrower ceases to be at least a half-time 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 Direct 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 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 repayment (see Sec. 674.33(b)), extensions of repayment (see Sec. 674.33(c)), forbearance (see Sec. 674.33(d)), or deferments (see Secs. 674.34, 674.35 and 674.36);

➤ ***Campus Partners provides:***

System III automatically transfers loans from enrolled to grace and then repayment status, based on the separation date provided by the school.

System III is programmed to automatically add the grace period following a deferment based on the dates of the deferment, grace expiration date and previous deferment history.

When a borrower returns to the same school or enrolls in another school without having used the entire initial grace period and submits a deferment form, Campus Partners processes a "grace deferment."

- (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 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.

➤ ***Campus Partners provides:***

Campus Partners will process these payments based on the borrower's instructions. When there are no instructions, the amount paid in excess of the amount due is used to prepay principal.

- (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 late charge on a Federal Perkins loan or a Direct 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 Sec. 674.43(b) (2), (3) and (4).

▲ **Insight:** *Sec. 674.43(b) outlines how the late charges must be calculated and the maximum late charges that can be assessed on loans made January 1, 1986, and after.*

- (B) The amount of the late or penalty charge on a Direct loan 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 shall 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.

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 enrollment as at least a regular half-time 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 Sec. 674.31.

674.33 Repayment.

➤ *Campus Partners provides:*

Refer to Past Due Processing Options in Appendix F-13 – F-16 for a quick reference guide to the various options available to assist past-due borrowers.

(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 Direct 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.

➤ *Campus Partners provides:*

Campus Partners' System III provides the automatic proration of the minimum amount among the loans a borrower has in a given loan program when all loans for the same borrower have the same minimum code. This is an optional feature.

System III also automatically treats each of the borrower's notes separately when they have different grace periods or deferment benefits, as required in subparagraph (4) above.

- (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 Sec. 674.33(c)); and
 - (ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

➤ *Campus Partners provides:*

Temporary modifications of the repayment schedule are entered as “special billing” on Campus Partners’ System III.

▲ **Insight:** *Section 674.33(c) referenced in (5)(i) above defines hardship as “prolonged illness or unemployment”.*

This repayment option may not extend the repayment period beyond ten years. This is stated in the borrower’s promissory note.

- (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 a Direct Loan or for a Federal Perkins loan made before October 1, 1992, or for a Direct or 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.

➤ **Campus Partners provides:**

The repayment plan and frequency used by the institution can be precoded into System III for each program.

System III is programmed to apply payments in the required sequence on Federal Perkins loans. Institutions with private loan funds can select another application sequence; however, interest always is paid before principal.

An institution that exercises the minimum option can have the minimum amount precoded in System III. It then will be entered automatically on each new loan. However, this field may be overridden by information supplied on the New Loan Input Form.

Campus Partners' Automatic Minimum Proration option ensures that your loans are in compliance with the requirements of paragraphs (b)(2), (3) and (4).

For borrowers who meet the requirements of subparagraph (b)(5), the Special Billing feature in System III allows the institution to temporarily bill borrowers for any amount. By also using the Automatic Scheduling option, the institution can ensure that loans put on temporary Special Billing will repay within the ten-year period. Loans in Special Billing can be monitored on the Exception and Special Billing Report.

(c) **Extension of repayment period—**

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

▲ **Insight:** *Under this provision, the repayment period may be extended beyond ten years.*

(2) **Low-income individual.**

- (i) For Federal Perkins loans and Direct loans 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 an extension of a repayment period.

<p>▲ Insight: <i>Income Protection Allowance charts should be available from the school's Financial Aid Office, where they routinely are used to determine financial aid awards.</i></p>

(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 written 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.
- (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.

▲ Insight: *A forbearance should also be granted to borrowers who serve in AmeriCorps. The interest that accrues during the forbearance will be paid by the Corporation for National and Community Service (CNCS) after the borrower has completed a term of service, pursuant to the limitation on amount in 45 CFR, Part 2529.10. For information about AmeriCorps, go to <http://www.cns.gov/ameriCorps> on the Web..*

- (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.

➤ Campus Partners provides:

Campus Partners can provide you with an Application for Forbearance form that borrowers should fill out to request a forbearance. The two-page form includes a request for the borrower to provide a comprehensive Income & Expense Summary. You may download the form from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

(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.

<p>▲ Insight: When a balance has been compromised, as described in paragraph (e) of this section, the loan is considered paid in full and may be removed from your cohort default rate, if applicable.</p>

- (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 reimbursement 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.**
The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the secretary determines that--

- (i) 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 685.213 (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

- (ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.
- (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 90 days before the school closed (or longer in exceptional circumstances); 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 602.2 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.

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- (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 90 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 Sec. 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) 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.
- (vii) 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.
- (viii) 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.
- (ix) 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.

674.34 Deferment of repayment – Federal Perkins loans, Direct loans and Defense loans.**➤ Campus Partners provides:**

Campus Partners includes Request for Deferment forms regularly with billing statements sent to borrowers. Schools and borrowers may also download this form from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Please refer to Appendix F-5 – F-7 for a summary of Deferment Provisions.

- (a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, a Direct loan, 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 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.

▲ Insight: *This deferment applies to borrowers who are disabled, and not to borrowers who are seeking training to work with disabled individuals.*

- (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, a Direct loan, 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 Secs. 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

▲ Insight: *The sections referenced in paragraph (c) above are the sections describing the cancellation provisions:*

674.53 – Teacher cancellations

674.54 – Removed

674.55 – Teacher cancellations for Defense Loans

674.56 – Employment cancellations

674.57 – Law enforcement cancellations

674.58 – Head Start cancellations

674.59 – Military cancellations

674.60 – Volunteer cancellations

- (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)(6) 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)(6) of this section.
- (1) Has been granted an economic hardship deferment under either the FDSL or 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–
- (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 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act.

▲ Insight:	<i>Annual updates of the poverty level for a family of two are published in the Federal Register by the U. S. Department of Health and Human Services. Campus Partners publishes the updated information in its monthly newsletter Campus Partners Update.</i>
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- (4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on federal postsecondary education loans, as determined under paragraph (e)(10) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section;
- (5) Is working full-time and has a Federal education debt burden as determined under paragraph (e)(10) of this section that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (3) of this section.
- (6) Is serving as a volunteer in the Peace Corps.
- (7) For a deferment granted under paragraph (e)(4) or (e)(5) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment–
 - (i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and
 - (ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for federal postsecondary education loans in accordance with paragraph (e)(9) of this section.
- (8) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e)(3), (e)(4), or (e)(5) 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.
- (9) For purposes of paragraphs (e)(3) and (e)(5) 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.

- (10) In determining a borrower's Federal education debt burden under paragraphs (e)(4) and (e)(5) of this section, the institution shall–
- (i) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment (or a proportional share if the payments are due less frequently than monthly); or
 - (ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.

➤ **Campus Partners provides:**

Campus Partners can provide you with an Application for Hardship/Unemployment form that borrowers should fill out to request a hardship deferment, an economic hardship deferment, or an unemployment deferment. The two-page form includes a request for the borrower to provide a comprehensive Income & Expense Summary. You may download these forms from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Refer to Past Due Processing Options in Appendix F-13 – F-16 for a quick reference guide to the various options available to assist past-due borrowers.

- (f) 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 certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate 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) 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 in determining the 10-year repayment period.
- (i) 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), and (g) of this section.

674.35 Deferment of repayment – Federal Perkins loans made before July 1, 1993.**➤ Campus Partners provides:**

Campus Partners includes Request for Deferment forms regularly with billing statements sent to borrowers. Schools and borrowers may also download this form from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Please refer to Appendix F-5 – F-7 for a summary of Deferment Provisions.

- (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 Sec. 674.59);
 - (2) On full-time active duty as a member of the National Oceanic and Atmospheric Corps;
 - (3) A Peace Corps volunteer (see Sec. 674.60);
 - (4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60);

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- (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.

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- (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 postgraduate 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—
 - (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.

▲ Insight: *A borrower can receive only one parental leave deferment for each child.*

A "newborn" is a child who is six months old or less.

The institution can accept a doctor's written statement or other document acceptable to the institution certifying that the borrower meets the conditions for this deferment. Campus Partners typically requests documentation indicating the possible date of conception through postpartum care to determine the benefit period.

- (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 necessary to avoid hardship to the borrower (see Sec. 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.

▲ **Insight:** *Section 674.33(c) is the provision that allows schools to extend the repayment due to hardship, and it defines "hardship" as prolonged illness or unemployment.*

674.36 Deferment of repayment – Direct loans made on or after October 1, 1980, but before July 1, 1993.**➤ Campus Partners provides:**

Campus Partners includes Request for Deferment forms regularly with billing statements sent to borrowers. Schools and borrowers may also download this form from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Please refer to Appendix F-5 – F-7 for a summary of Deferment Provisions.

- (a) The borrower may defer repayment on a Direct 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 Sec. 674.59);
 - (2) A Peace Corps volunteer (see Sect. 674.60);
 - (3) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60);

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- (4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or the under 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 which 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 fund raising 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 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 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 Sec. 674.33(c)).

▲ Insight: *Section 674.33(c) is the provision that allows schools to extend a borrower's repayment period due to hardship, and it defines "hardship" as prolonged illness or unemployment.*

- (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 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.

674.37 Deferment of repayment – Direct loans made before October 1, 1980 and Defense loans.**➤ Campus Partners provides:**

Campus Partners includes Request for Deferment forms regularly with billing statements sent to borrowers. Schools and borrowers may also download this form from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Please refer to Appendix F-5 – F-7 for a summary of Deferment Provisions.

- (a) A borrower may defer repayment–
 - (1) On a Direct loan 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 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 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 Sec. 674.59);
 - (2) A Peace Corps volunteer (see Sec. 674.60); or
 - (3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (See Sec. 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 Sec. 674.33(c)).

▲ Insight: *Section 674.33(c) is the provision that allows schools to extend a borrower's repayment period due to hardship, and it defines "hardship" as prolonged illness or unemployment.*

- (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.

674.38 Deferment procedures.

- (a)
 - (1) Except as provided in paragraph (a)(2) 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) 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.
 - (3) 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.

➤ Campus Partners provides:

System III's Automatic Reprocessing feature greatly facilitates retroactive adjustments that are necessary under the requirements of paragraph (c). After the loan is decelerated and the separation date is changed, Automatic Reprocessing automatically recalculates all fields affected, i.e., amounts due, grace expiration date, due date, etc.).

- (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 Secs. 674.34(e)(6), 674.35(c)(3), 674.36(c)(2), 674.37(c)(2), and Sec. 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 Sec. 674.34(e), not to exceed 3 years.

▲ Insight:

In its Dear Colleague letter GEN 91-11 of February 1991, the Department published special guidelines for borrowers who served in the Desert Shield and Desert Storm operations in the Persian Gulf. Additional guidelines extending the deferment period for reservists were published by the Department in its Dear Colleague Letter GEN 91-19 dated June 1991.

In the Federal Register of September 16, 1991, the Department announced waivers and modifications of statutory and regulatory provisions to assist Federal Perkins borrowers who served on active duty in the Persian Gulf. One of these new regulations states that borrowers who were not in default when they began active duty must be considered "in school" during the time they served on such active duty.

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 judgement has been secured. The institution's loan rehabilitation program must provide that--
 - (1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and
 - (2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months and the borrower requests rehabilitation.
- (b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must--
 - (1) Return the borrower to regular repayment status;
 - (2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and
 - (3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.
- (c) Collection costs on a rehabilitated loan--
 - (1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment;
 - (2) That exceed the amounts specified in paragraph (c)(1) of this section may be charged to an institution's Fund until July 1, 2002 in accordance with Sec. 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.

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, Direct and Federal Perkins loans and only one can be canceled, the amount due on the uncanceled loan is the amount established in Sec. 674.31(b)(2), loan repayment terms; Sec. 674.33(b), minimum repayment rates; or Sec. 674.33(c), extension of repayment period.

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.

▲ **Insight:** Borrowers may contact the Ombudsman's Office at 887/557-2575 (a toll-free call) or at <http://osfaombudsman.ed.gov>.

➤ **Campus Partners provides:**

You can use the "special message" area on bills and notices to communicate with your borrowers. You can also use Campus Partners' computer-generated letters (QuikLetters) with up to 20 lines of text. You may create your own QuikLetters or use Campus Partners' standard text.

- (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.

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 interview.**

- (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) Review for the borrower available repayment options (e.g. loan consolidation and refinancing, including the consequences of consolidating a Federal Perkins Loan);
 - (iii) Suggest to the borrower debt-management strategies that would facilitate repayment;
 - (iv) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;
 - (v) Describe the likely consequences of default, including adverse credit reports and litigation;
 - (vi) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the institution;

- (vii) Review for the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan;
- (viii) 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;
- (ix) Review for the borrower information on the availability of the Student Loan Ombudsman's office; and
- (x) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

➤ **Campus Partners provides:**

To assist institutions in meeting the requirements of paragraph (b)(2)(viii) of this section, Campus Partners provides (at no charge) the Loan Interview Sheet. This form may be downloaded from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

- (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 (Direct loans 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.

➤ *Campus Partners provides:*

To assist institutions in complying with this requirement, Campus Partners can provide personalized Automated Exit Interview Packages with computer-printed disclosure information and a mailing label. It can be generated automatically (based on the separation date) or ordered when needed. This form may also be downloaded from Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Institutions using DataLink also can print a disclosure statement instantaneously from the XPKG screen.

Campus Partners also provides the required contacts with the borrower during the initial and post deferment grace periods, as outlined in paragraph (c) of this section.

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.

➤ ***Campus Partners provides:***

To assist you in complying with the requirements of 674.43(a), Campus Partners provides the following:

You may select coupon books or statements as the billing method for your loans. The first billing, 30 days before the due date, always is a statement even if you have selected coupon books.

Borrowers have the option to use AutoDraft, which automatically debits their bank account for the installment amount. These borrowers receive an annual statement. The ADD application may be downloaded from the Campus Partners' web site at <http://www.campuspartners.com/forms.asp>.

Billing statements, other than the first one, are generated 20 days before each due date and mailed 15-20 days before payments are due.

- (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 Sec. 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.

▲ Insight: *The Department of Education has ruled that institutions would not be responsible for implementation before July 1, 1987.*

Sec. 674.47 describes the costs chargeable to the Fund. Paragraph (a) clarifies the portion of the late charges that can be charged to the Fund.

- (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.

➤ Campus Partners provides:

The assessment of the late charges is one of the many system options that are available to Campus Partners' customers. It is programmed not to exceed the 20-percent maximum. Campus Partners has provided each institution with its average cost of past due contacts (the minimum to be assessed). You may add to that amount any cost incurred by your institution in addition to the services provided by Campus Partners.

- (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—
- (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 Sec. 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.

▲ Insight: *Sec. 674.31(b)(5) outlines the late charge provisions that must be included in the promissory note.*

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- (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 Sec. 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.

▲ **Insight:** *Sec. 674.31 referenced in subparagraph (e)(1) above describes the terms that must be included in the promissory note. Paragraph (b)(8) of that section describes the acceleration provisions.*

➤ **Campus Partners provides:**

System III offers automatic acceleration based on a number of days past due or on placement with a collection agency. As an alternative, you may request acceleration on a loan-by-loan basis.

For institutions that use automatic acceleration, the Final Demand Letter will include a statement of the intent to accelerate the loan.

This notification is available as a service option whether or not you selected automatic acceleration. Campus Partners sends a copy to the borrower and a copy to you for the borrower's file. Campus Partners keeps a copy on microfiche.

- (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.

➤ **Campus Partners provides:**

The 90-day telephone call can be provided by Campus Partners as a service option. Institutions preferring to make the call can receive the Borrowers to Receive a Notice report.

- (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.

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 inquires 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 Sec. 674.47(g).

▲ Insight: *Sec. 674.47(g) describes the provision that allows institutions to cease collection activities on a defaulted loan with a total outstanding balance less than \$25. The reference in 674.44(d)(3) above should read 674.47(h), which allows the write off of accounts with a balance of less than \$5.*

➤ *Campus Partners provides:*

The Bad Address List and Borrowers Without a Good Address Report should be used to initiate address searches with your personnel or a commercial firm. These reports show addresses that are "bad," the telephone number and driver's license number.

A monthly IRS Skip Trace Report lists loans eligible to be submitted to the IRS for an address update.

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 Sec. 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as a 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 Sec. 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.

➤Campus Partners provides:

To comply with the requirements of paragraph (b) of this section, Campus Partners offers reporting to three major credit bureaus as a service option. You may select automatic reporting or reporting on a loan-by-loan basis. Contact your school relations coordinator for a contract and fee information.

- (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 either—
 - (i) Litigate in accordance with the procedures in Sec. 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 Sec. 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.

➤ **Campus Partners provides:**

*If you use your own personnel to comply with paragraph (c) of this section, you can request to be assigned an "internal agency number" to benefit from the **free** reporting provided by Campus Partners. System III has two placement options (automatic and manual) that can be used to place loans with internal collectors or commercial firms. When loans are coded for collection, Campus Partners sends the institution and collection agency the New Placements, Transactions Against Loans in Collection, and Inventory of Loans in Collection reports. You can monitor the length of time that a loan has been placed by using the "date placed" shown on the Collection Inventory Report.*

- (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 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 Sec. 674.47(g).

▲ **Insight:** *President Bush, on April 9, 1991, enacted P.L. 102-26, which eliminated the statute of limitation for student loan collections "... without regard for federal or state statutory, regulatory or administrative limitation on the period within which debts may be enforced." This change is effective as if enacted by COBRA (1985).*

Sec. 674.47(g) describes the provision that allows institutions to cease collection activities on a defaulted loan with a total outstanding balance less than \$25. The reference in 674.45(d)(3) above should read as 674.47(h), which allows the write off of accounts with a balance of less than \$5.

➤ **Campus Partners provides:**

Consistent with the provisions of paragraph (d) of this section, when loans reach 851 days past due, no longer are with an agency, and have had no monetary activity in 90 days, Campus Partners sends an annual contact to the borrowers to remind them of their obligation. If the days past due are reduced to less than 851 days (e.g., because of payments), Campus Partners will resume billing based on the regular schedule.

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

▲ Insight: *Sec. 674.47(d) describes the conditions under which the institution can waive the collection cost.*

- (2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and Secs. 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) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

▲ Insight: *The sections referenced in subparagraph (e)(2) above are Address Searches (Sec. 674.44), Litigation Procedures (Sec. 674.46), Use of Contractors (Sec. 674.48) and Bankruptcy of Borrower (Sec. 674.49).*

➤ Campus Partners provides:

To assist schools in recording and collecting costs described in paragraph (e) above, collection costs incurred by the institution with its personnel can be entered in the Other Costs due field on System III. Payments made will apply against that amount before late charges, interest or principal.

Campus Partners can assess collection agency fees automatically by entering into System III the fee percentage from each collection agency you use. When payments are received from borrowers in collection, the percentage is taken from each payment and applied toward collection cost paid by the borrower; the remainder is applied to late charges, interest and principal. Loans with a 25-percent limit on collection costs can be flagged to indicate the maximum.

- (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.

▲ **Insight:** Borrowers may contact the Ombudsman's Office at 887/557-2575 (a toll-free call) or at <http://osfaombudsman.ed.gov>.

674.46 Litigation procedures.

- (a) (1) If the collection efforts described in Sec. 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, National Direct 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 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 Secs. 674.41 through 674.46, the institution may–
 - (1) Submit the account to the Secretary for assignment in accordance with the procedures in Sec. 674.50; or
 - (2) With the Secretary's approval, refer the account to the Department for collection.

▲ **Insight:** *Sec. 674.41 through 674.46 are the due diligence requirements from coordination of information within the institution through grace period contacts, billing procedures, collection and litigation.*

➤ **Campus Partners provides:**

Litigation costs incurred by the institution can be entered in the Collection Fees due field if it has not been used to record collection cost owed to the institution. As an alternative, the litigation cost can be displayed in the Loan Remark or as a history comment.

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 Sec. 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 late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to Sec. 674.43.

▲ Insight: Sec. 674.43 outlines Billing Procedures. Subparagraph (b)(2) is the provision that directs institutions to assess late charges against the borrowers.

(b) General: Collection costs.

- (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to Secs. 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 and 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 Sec. 674.43 to demand payment of overdue amounts on the loan.

▲ Insight: Secs. 674.45(e) and 674.46(b) are the provisions that require schools to assess and attempt to collect collection and litigations costs. The other sections referenced in subparagraph (b)(1) are Address Searches (Sec. 674.44); Collection Procedures (Sec. 674.45); Litigation Procedures (Sec. 674.46); Use of Contractor (Sec. 674.48); and Bankruptcy of Borrower (Sec. 674.49).

(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 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 Sec. 674.44(b).
 - (2) Costs related to the use of credit bureaus as provided in Sec. 674.45(b)(1).
 - (3) For first collection efforts pursuant to Sec. 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.
 - (4) For second collection efforts pursuant to Sec. 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 Sec. 674.39, amounts that exceed the amounts specified in Sec. 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 Sec. 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.

▲ Insight: The reference in paragraph (e)(6)(iii) above should read (e)(6)(ii) instead of (e)(5)(ii).

- (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 Sec. 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 in 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 Sec. 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.

▲ **Insight:** *In a letter to the Coalition of Higher Education Assistance Organizations dated November 29, 1995, the Department clarified that write-offs of accounts are determined at the borrower level and that "this is consistent with the assignment process in which accounts (at the borrower level) with balances as small as \$25 may be assigned to the Department."*

➤ **Campus Partners provides:**

You can identify the amount of collection agency fees paid by borrowers and the amount chargeable to the Fund by using the Accounting Report.

Loans that are written off are listed in the Write-Off Journal section of the Accounting Report. You may use this report to reimburse the Fund or as a backup list for the accounting entries.

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

➤Campus Partners provides:

These monthly reports reflect all activities for each borrower:

- 1. Transactions and Adjustments Journal;*
- 2. Student Loan Journal;*
- 3. Changed Name and Address Report; and*
- 4. Cash Activity Report.*

Campus Partners operates a lockbox facility in Winston-Salem, NC, and borrowers are instructed to send their payments to that address.

- (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 a institution uses a billing service to carry out Sec. 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) If 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 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.

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.

➤ **Campus Partners provides:**

When Campus Partners receives the Order of First Meeting of Creditors (or any other document that indicates the borrower has filed for bankruptcy), Campus Partners takes these steps immediately:

1. *Changes the status code to 84 (Chapter 7 and 11) or 86 (Chapter 13). These codes stop the accrual of interest and prevent bills and notices from being generated;*
2. *Records the petition date on the loan;*
3. *Enters a history comment to record the receipt of the document;*
4. *Sends the original document to the school; and*
5. *Files a copy that will be microfilmed for permanent retention.*

- (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 institution 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.

▲ Insight: *With bankruptcy petitions filed before May 28, 1991, the loan must have been in repayment for five years instead of seven years to be discharged.*

Student loans are not dischargeable if the petition was filed on or after October 8, 1998, unless the borrower seeks relief because of undue hardship.

- (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.

➤ Campus Partners provides:

When the petition date and bankruptcy status are removed, the Automatic Reprocessing features in System III automatically will recalculate the correct accrued interest and all amounts due. To eliminate the amounts that became due during the period of stay, other than the accrued interest, we process a customer adjustment type "Y", plan "4". Regular billing is then resumed.

When the discharge document is received and the debt is deemed dischargeable, Campus Partners will process a bankruptcy cancellation and close the loan.

- (d) **Request for determination of nondischargeability.** 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).

➤ *Campus Partners provides:*

To monitor the borrower's compliance with a Chapter 13 plan, you may use the Loan Monitoring Flag on each loan with an approved repayment plan. These loans are printed on the Loan Monitoring Report, which you may order as an optional report.

When the petition date and bankruptcy status are removed, the Automatic Reprocessing features in System III automatically will recalculate the correct accrued interest and all amounts due. To eliminate the amounts that became due during the period of stay, other than the accrued interest, we process a customer adjustment type "Y", plan "4". Regular billing is then resumed.

When the discharge document is received and the debt is deemed dischargeable, Campus Partners will process a bankruptcy cancellation and close the loan.

- (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.

▲ *Insight:*

11 U.S.C. 1307 concerns the dismissal of a Chapter 13 case or the conversion of a case filed under Chapter 13 to a Chapter 7 proceeding.

11 U.S.C. 1325 concerns the confirmation by the court of a borrower's proposed repayment plan.

11 U.S.C. 1328(b) concerns the discharge of debts. Institutions should consult legal counsel for the best advice on how to proceed when a borrower files for bankruptcy.

- (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
 - (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.

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 Sec. 674.45(a) and litigation, if required under Sec. 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 or greater; and
 - (3) The loan has been accelerated.

▲ Insight: *If you assign loans to the U.S., note that:*

1. *It will not reduce your cohort default rate.*
2. *Your school will not receive any funds collected on those loans by the Department of Education.*
3. *The funds collected on assigned loans are not returned to the Perkins loan fund.*
4. *Your school loses its institutional capital contribution (ICC) on those loans.*

- (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 Sec. 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.

➤ *Campus Partners provides:*

You must instruct Campus Partners to cease billing and collection activities and credit bureau reporting before assigning loans to the Department of Education.

To assign loans, you may order Campus Partners' Assignment Package, which includes a Preassignment Report, an Assignment Checklist, approved facsimile of the Perkins Assignment Form, a manifest and history printout. You may also request that the loans be coded with status 82 (Assigned) at that time or later after all forms are ready to mail to the Department.

- (8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services and has notified that firm to cease collection activity on the loans.
- (9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.
- (10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.
- (d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.
- (e) The Secretary does not accept assignment of a loan if–
- (1) The institution has not provided the Social Security number of the borrower;
- (2) The borrower has received a discharge in bankruptcy, unless–
- (i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or
- (ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order; or
- (3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

- (f) (1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title and interest of the institution in that loan.
- (2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

➤ *Campus Partners provides:*

When loans have been accepted, the institution should notify Campus Partners so that the status can be changed to 93 (Accepted). Payments that Campus Partners receives from these borrowers are deposited in the institution's bank account but not applied to the loans. They are listed as "reconciling items" on the Accounting Report.

If a loan is not accepted, the institution should instruct Campus Partners to put the loan in repayment status. If the institution reimburses the Fund, the loan can be transferred into an institutional program for collection.

- (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.

674.51 Special definitions.

▲ Insight: A chart outlining cancellation benefits appears in Appendix F-9 – F-10.

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) **Children and youth with disabilities:** Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.
- (e) **Early intervention services:** Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

▲ Insight: Please refer to Appendix C for sections of the Individuals with Disabilities Education Act (IDEA) referenced in paragraphs (d) and (e) above. However, these section numbers no longer correspond to information in the IDEA, as amended in January 1997. For 602(a)(1) refer to 602(3) in Appendix C. For 672(2) refer to 632(4) in Appendix C.

- (f) **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.
- (g) **Handicapped children:** Children of ages 3 through 21 inclusive who require special education and related services because they are–
 - (1) Mentally retarded;
 - (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.
- (h) **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.
- (i) **Infants and toddlers with disabilities:** Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

▲ **Insight:** Please refer to Appendix C for sections of the Individuals with Disabilities Education Act (IDEA) referenced in paragraph (i) above. However, this section number no longer corresponds to information in the IDEA, as amended in January 1997. For 672(1) refer to 632(5) in Appendix C.

- (j) **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.
- (k) **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.
- (l) **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.
- (m) **Nurse:** A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.
- (n) **Qualified professional provider of early intervention services:** A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

▲ **Insight:** Please refer to Appendix C for sections of the Individuals with Disabilities Education Act (IDEA) referenced in paragraph (n) above. However, this section number no longer corresponds to information in the IDEA, as amended in January 1997. For 672(2) refer to 632(4) in Appendix C.

- (o) **Secondary school:**
 - (1) A school that provides secondary education, as determined by—
 - (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.
- (p) **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.

(q) **Teacher:**

- (1) A teacher is a person who provides—
 - (i) Direct classroom teaching;
 - (ii) Classroom-type teaching in a nonclassroom 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.

- (r) **Teaching in a field of expertise:** The majority of classes taught are in the borrower's field of expertise.

➤ ***Campus Partners provides:***

Campus Partners' staff are trained to process request for cancellation based on federal regulations. In addition, Campus Partners' Compliance Department keeps staff informed of changes in these regulations as they occur.

Campus Partners includes forms for cancellation regularly with billing statements sent to borrowers. These forms may also be downloaded from the Campus Partners user web site at <http://www.campuspartners.com/forms.asp>.

Please refer to F-9 – F-10 for a summary of Cancellation Provisions.

- (s) **Total and permanent disability:** The condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.

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.

▲ Insight: The amount cancelled based on the provisions outlined in this subpart is not considered income for purposes of IRS Code of 1968. Ref: HEA, Section 465(a)(4)

(b) **Part-time employment.**

- (1) (i) 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.
- (ii) 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.
- (2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if–
- (i) The borrower completes the first half of the academic year, and has begun teaching the second half; and
- (ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure and retirement.

(c) **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 the 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 cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

▲ Insight: *Although subparagraph (2) above clearly states that a borrower cannot qualify for a cancellation for services performed on or after the date of acceleration, the Department of Education refers us to its Deferment and Cancellation Guide published in February 1985 when the issue of eligibility after acceleration is raised. The Guide includes on page 44 the following statement: "If an account has been accelerated, the institution has the prerogative to reinstate the loan (deacceleration) if the institution and the borrower reach an agreement on a new repayment schedule. If the loan is reinstated, the borrower can then receive the entitlements (such as cancellation benefits) specified in the promissory note. The institution can use this option to reinstate a loan as a bargaining tool when it is attempting to collect defaulted loan amounts."*

(d) Concurrent deferment period.

The Secretary considers a Perkins Loan, Direct Loan or Defense Loan borrower's loan deferment under Sec. 674.34(c) to run concurrently with any period for which cancellation under Secs. 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

▲ Insight: *Sec. 674.34(c) referenced above refers to deferment for services eligible for cancellation. The other sections referenced above represent cancellation categories:*

674.53 – Teacher cancellations
 674.54 – Removed
 675.55 – Teacher cancellation for Defense Loans
 675.56 – Employment cancellations
 675.57 – Law enforcement cancellations
 675.58 – Head Start cancellations
 675.59 – Military cancellations
 675.60 – Volunteer cancellations

Borrowers who perform a service eligible for a partial loan cancellation should request a deferment at the beginning of the period of service [ref. 674.34(c)]. The borrowers who complete one full year of service (12 consecutive months for service or employment, or 2 consecutive semesters for teachers) are eligible to request a cancellation. If a borrower does not complete the year of service, the deferment must be ended as of the date the service ended. However, the borrower retains the deferment for the period service was performed, and receives the six-month post deferment grace period.

- (e) **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.

▲ **Insight:** *This provision refers to borrowers who are members of Americorps. These borrowers receive an education award for each year of service and, as stated above, cannot receive a partial loan cancellation for the same year.*

674.53 Teacher cancellation – Federal Perkins, Direct 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 a Direct loan 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, Direct 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.
 - (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 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 total enrollment is made up of title I children.
- ▲ Insight:** Refer to Sec. 674.51 for a definition of Title I Children.
- (3) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.
 - (4)
 - (i) The Secretary selects schools under paragraph (a)(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.
 - (iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.
 - (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 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 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 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 Direct 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, Direct 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.

▲ Insight: Refer to Sec. 674.51 for a definition of "Infants and toddlers with disabilities" and "Children and youth with disabilities."

(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 Direct loan 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, Direct 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.

▲ Insight: Refer to Sec. 674.51 for a definition of "Teaching in a field of expertise."

▲ Insight: *Effective October 7, 1998, borrowers with loans made before July 1, 1993, became eligible to receive teach cancellations for full-time teaching in fields of expertise. Because cancellations are granted on the basis of two consecutive semesters, the first eligible cancellation period was the second semester of the 1998/99 academic year, beginning January 1999. To cover the period October 7, 1978, to the end of December 1998, during which borrowers were eligible to receive a deferment, Campus Partners processed a deferment type "Z" (service eligible for cancellation.)*

(d) **Cancellation rates.**

- (1) To qualify for cancellation under paragraphs (a), (b), or (c) of this section, a borrower shall 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 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.

674.54 [Removed and Reserved October 28, 1999.]

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.

▲ Insight: Refer to Sec. 674.51 for a definition of Title I Children.

- (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.
- (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.
- (7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

▲ Insight: Paragraph (b) referenced in subparagraph (7) above refers to cancellation for teaching low-income students.

Note: There is no subparagraph (6) in the regulation. Subparagraph (7) is incorrectly numbered and should be numbered (6).

(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.

▲ Insight: Refer to Sec. 674.51 for a definition of handicapped children.

- (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.

▲ Insight: Paragraph (c) referenced in subparagraph (4) above refers to cancellation for teaching handicapped children.

- (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.

674.56 Employment cancellation – Federal Perkins, Direct 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 Direct loan 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, Direct 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 or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of these children.
- (2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct 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 Direct loan 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 676(b)(9) of the Individual with Disabilities Act.
- (2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct 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.

▲ **Insight:** Refer to Sec. 674.51 for a definition of nurse, medical technician, high-risk children, low-income communities and qualified professional provider.

Refer to Appendix C for sections of the Individuals With Disabilities Education Act (IDEA) referenced in paragraph (c) above. However, this section number no longer corresponds to information in the IDEA, as amended in January 1997. For 676(b)(9) refer to 635(a)(10) in Appendix C.

(d) **Cancellation rates.**

- (1) To qualify for cancellation under paragraphs (a), (b), and (c) 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.

674.57 Cancellation for law enforcement or corrections officer service – Federal Perkins, Direct and Defense loans.

- (a)
 - (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct Loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.
 - (2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct 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 public-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)
 - (1) To qualify for cancellation under paragraph (a) of this section, a borrower shall 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.

674.58 Cancellation for service in a Head Start program.

- (a)
 - (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Direct 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) The Head Start program in which the borrower serves must operate for a complete academic year, or its equivalent.
 - (4) 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 program.
- (b) The cancellation rate is 15 percent of the original loan principal, 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 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) "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 program.

674.59 Cancellation for military service.**(a) Cancellation on a Defense loan.**

- (1) An institution shall 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 a Direct or Federal Perkins loan.

- (1) An institution shall cancel up to 50 percent of a Direct or Federal Perkins loan for service 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.
- (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.

▲ Insight: Borrowers serving in **areas of hostilities** should request a deferment at the beginning of the period of service [ref. 674.34(c)]. To receive the cancellation benefit, borrowers must serve for a complete year (12 consecutive months). Borrowers who do not serve one full year will not be eligible for cancellation, but will retain the deferment benefit for the period they served, and receive the six-month post deferment grace period.

For an up-to-date list of areas that qualify for special pay because of duty subject to hostile fire or imminent danger (areas of hostilities), visit this web site <http://www.dtic.mil/comptroller/fmr/07a/07A10.pdf>.

U.S. Army Loan Repayment Program — Although it is not a cancellation, it is useful to know that the U.S. Army offers a loan repayment program as an enlistment incentive. If a Federal Perkins (or FFELP loan) borrower serves as an enlisted person in the U.S. Army Reserves (or Army National Guard) the Department of Defense will repay a portion of the loan. For more information, the student should contact his or her local Army recruiting office. This is a recruitment program and does not pertain to an individual's prior service. (At this writing, the Army was the only branch of the Armed Forces offering this repayment program.)

674.60 Cancellation for volunteer service – Federal Perkins loans, Direct loans 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 a Direct or Defense loan for service as a volunteer under The Peace Corps 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 12-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 12-month periods of service.

674.61 Discharge for death or disability.

- (a) **Death.** An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of an original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon other reliable documentation supporting the discharge request.
- (b) **Total and permanent disability.**
 - (1) If the Secretary has made an initial determination that the borrower is totally and permanently disabled, as defined in Sec. 674.51(s), the loan is conditionally discharged for up to three years from the date that the borrower became totally and permanently disabled, as certified by a physician. The Secretary suspends collection activity on the loan from the date of the initial determination of total and permanent disability until the end of the three-year conditional period. If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the condition discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the date the borrower became totally and permanently disabled as certified under Sec. 674.61(b)(3) are returned to the sender.
 - (2) A borrower satisfies the criteria for a discharge of a loan based on a total and permanent disability if, during and at the end of the three-year conditional discharge period described in paragraph (b)(1) of this section—
 - (i) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act; and
 - (ii) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status.
 - (3) If a borrower becomes totally and permanently disabled after receiving a Defense, NDSL, or Perkins loan, the institution must assign the loan to the Secretary if the borrower submits a certification by a physician and the institution reviewed the application and determined that it is complete and that it supports the conclusion that the borrower has a total and permanent disability as defined in Sec. 674.51(s).
 - (4) At the time the loan is assigned to the Secretary the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge.

- (5) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable under the terms of the promissory note.
- (6) If the Secretary makes an initial determination that the borrower is totally and permanently disabled, the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years after the date the borrower became totally and permanently disabled as certified under Sec. 674.61(b)(3). This notification identifies the conditions of the conditional discharge period specified in paragraphs (b)(6) through (b)(9) of this section and specifies that all or part of the three-year period may predate the Secretary's initial determination.
- (7) During the conditional discharge period; the borrower—
 - (i) Is not required to make any payments on the loan;
 - (ii) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;
 - (iii) Must promptly notify the Secretary of any changes in address or phone number;
 - (iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(2)(i) of this section; and
 - (v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for discharge under this section.
- (8) If, during and at the end of the conditional discharge period, the borrower continues to satisfy the eligibility criteria for a total and permanent disability discharge, as described in paragraph (b)(2) of this section, the balance of the loan is discharged.
- (9) If, at any time during or at the end of the three-year conditional discharge period, the borrower does not continue to meet the eligibility requirements for total and permanent disability discharge, the Secretary resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the initial determination described in paragraph (b)(6) of this section through the end of the conditional discharge period.
- (10) 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 for determination

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

- (11) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.
- (c) **No Federal reimbursement.** No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.
- (d) **Retroactive.** Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

674.62 No cancellation for prior service – no repayment refunded.

(a) No portion of a loan may be canceled 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.

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 the principal and interest canceled under Secs. 674.55 and 674.59(a).
- (2) The institution's share of canceled 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 Direct and Federal Perkins loan cancellation.** The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under Secs. 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.

▲ Insight: In subparagraph (a)(1), sections 674.55 and 674.59(a) refer to Teacher and Military cancellations on Defense loans.

Reimbursement for Defense loans is determined as follows:

$$\text{Total canceled principal and interest} \times \frac{\text{ICC}}{\text{ICC} + \text{FCC}} = \text{School's share of canceled principal and interest}$$

*“ICC” is the school’s capital contribution to the Federal Perkins Fund;
“FCC” is the Federal Capital Contribution to the Fund.*

Reimbursements for amounts canceled on Defense Loans represent institutional funds and can be used at the school’s discretion.

The section numbers referenced in paragraph (b) are the cancellation provisions for Direct and Federal Perkins loans.

The Department will not reimburse schools for cancellations because of death, disability or bankruptcy.

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Part 673 – General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program

▲ Insight: *In the November 27, 1996, Federal Register, the Department of Education published final regulations to consolidate provisions that are common to the campus-based programs: Federal Perkins Loans, Federal Work Study (FWS), and Federal Supplemental Educational Opportunity Grants (FSEOG). These regulations, which became effective July 1, 1997, eliminate provisions in each of these campus-based programs, and create a new Part 673, which includes those General Provisions applicable to all three programs. We have added the new Part 673 in the Appendix of this manual.*

Subpart A – Purpose and Scope

673.1 Purpose

This part governs the following three programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA) that participating institutions administer:

- (a) The Federal Perkins Loan Program, which encourages the making of loans by institutions to needy undergraduate and graduate students to help pay for their cost of education
- (b) The Federal Work-Study (FWS) Program, which encourages the part-time employment of undergraduate and graduate students who need the income to help pay for their cost of education and which encourages FWS recipients to participate in community service activities.
- (c) The Federal Supplemental Education Opportunity Grant (FSEOG) Program, which encourages the providing of grants to exceptionally needy undergraduate students to help pay for their cost of education.

673.2 Applicability of regulations

The participating institution is responsible for administering these programs in accordance with the regulations in this part and the applicable program regulations in 34 CFR parts 674, 675, and 676.

Subpart B – General Provision for the Federal Perkins Loan, FWS, and FSEOG Programs

673.3 Application

- (a) To participate in the Federal Perkins Loan, FWS, or FSEOG, an institution shall file an application before the deadline date established annually by the Secretary through publication of a notice in the *Federal Register*.
- (b) The application for the Federal Perkins Loan, FWS, and FSEOG programs must be on a form approved by the Secretary to determine the institution's allocation or reallocation of funds under sections 462, 442, and 413D of the HEA, respectively.

673.4 Allocation and reallocation

- (a) *Allocation and reallocation of Federal Perkins Loan funds.*
 - (1) The Secretary allocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program in accordance with section 462 of the HEA.
 - (2) The Secretary reallocates funds to institutions participating in the Federal Perkins Loan Program by –
 - (i) Reallocating 20 percent of the total funds available in accordance with section 462(j) of the HEA; and
 - (ii) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan Program
- (b) *Allocation and reallocation of FWS funds.* The Secretary allocates and reallocates funds to institutions participating in the FWS Program in accordance with section 442 of the HEA.
- (c) *Allocation and reallocation of FSEOG funds.*
 - (1) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA
 - (2) The Secretary reallocates funds to institutions participating in the FSEOG Program in a manner that best carries out the purposes of the FSEOG Program.
- (d) *General allocation and reallocation.* –
 - (1) *Categories.* As used in section 462 (Federal Perkins Loan Program), section 442 (FWS Program), and section 413D (FSEOG Program) of the HEA, “Eligible institutions offering comparable programs of instruction” means

institutions that are being compared with the applicant institution and that fall within one of the following six categories:

- (i) Cosmetology.
 - (ii) Business.
 - (iii) Trade/Technical.
 - (iv) Art Schools.
 - (v) Other Proprietary Institutions
 - (vi) Non-Proprietary Institutions.
- (2) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary provides an institution its allocation in accordance with the payment methods described in 34 CFR 668.162.
- (3) *Unexpended funds.*
- (i) If an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the Secretary reduces the institution's allocation for that program for the second succeeding award year by the dollar amount returned.
 - (ii) The Secretary may waive the provision of paragraph (d)(3)(i) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.
 - (iii) The Secretary considers enforcement of paragraph (d)(3)(i) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.
- (e) *Anticipated collections of Federal Perkins Loan funds.*
- (1) For the purposes of calculating an institution's share of any excess allocation of Federal Perkins Loan funds, an institution's anticipated collections are equal to the amount that was collected by the institution during the second year preceding the beginning of the award period multiplied by 1.21.
 - (2) The Secretary may waive the provision of paragraph (e)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

- (f) *Authority to expend FWS funds.* Except as specifically provided in 34 CFR 675.18(b), (c), and (f), an institution may not use funds allocated or reallocated for an award year –
 - (1) To meet FWS wage obligations incurred with regard to an award of FWS employment made for any other award year; or
 - (2) To satisfy any other obligation incurred after the end of the designated award year.
- (g) *Authority to expend FSEOG funds.* Except as specifically provided in 34 CFR 668.164 (g), an institution shall not use funds allocated or reallocated for an award year –
 - (1) To make FSEOG disbursements to students in any other award year; or
 - (2) To satisfy any other obligation incurred after the end of the designated award year.

673.5 Overaward

- (a) *Overaward prohibited.* –
 - (1) *Federal Perkins Loan and FSEOG Programs.* An institution may only award or disburse a Federal Perkins loan or an FSEOG to a student if that loan or the FSEOG, combined with the other resources the student receives, does not exceed the student's financial need.
 - (2) *FWS Program.* An institution may only award FWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.
- (b) *Awarding and disbursement.*
 - (1) When awarding and disbursing a Federal Perkins loan or an FSEOG or awarding FWS employment to a student, the institution shall take it into account those resources it –
 - (i) Can reasonably anticipate at the time it awards Federal Perkins Loan funds, an FSEOG, or FWS funds to the student;
 - (ii) Makes available to its students; or
 - (iii) Otherwise knows about.
 - (2) If a student receives resources at any time during the award period that were not considered in calculating the Federal Perkins Loan amount or the FWS or

FSEOG award, and the total resources including the loan, the FSEOG, or the prospective FWS wages exceed the student's need, the overaward is the amount that exceeds the need.

(c) *Resources.*

- (1) Except as provided in paragraph (c)(2), (c)(3), and (c)(4) of this section, the Secretary considers that "resources" include, but are not limited to, any –
 - (i) Funds a student is entitled to receive from a Federal Pell Grant;
 - (ii) William D. Ford Federal Direct Loans;
 - (iii) Federal Family Education Loans;
 - (iv) Long-term loans, including Federal Perkins loans made by the institution;
 - (v) Grants, including FSEOGs, State grants, and ROTC subsistence allowances;
 - (vi) Scholarships, including athletic scholarships and ROTC scholarships;
 - (vii) Waivers of tuition and fees;
 - (viii) Fellowships or assistantships;
 - (ix) Veterans educational Benefits paid under Chapters 30, 31, 32, and 35 of title 38 of the United States Code;
 - (x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);
 - (xi) Net earnings from need-based employment; and
 - (xii) Insurance programs for the student's education.
- (2) The secretary does not consider as a resource –
 - (i) Any portion of the resources described in paragraph (c)(1) of this section that are included in the calculation of the student's expected family contribution (EFC); and
 - (ii) Earnings from non-need-based employment.
- (3) The institution may treat a Federal Direct PLUS Loan, a Federal PLUS Loan, a Federal Direct Unsubsidized Stafford/Ford Loan, a Federal Unsubsidized

Stafford Loan, or a State-sponsored or private loan as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

- (4) The institution may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and subsidized Federal Stafford Loan that is equal to or less than the amount of a student's veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post service benefits paid for the cost of attendance under Title I of the National and Community Service Act of 1990 (AmeriCorps).
- (d) *Treatment of the resources in excess of need – General.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Federal Perkins Loan, FWS, or FSEOG eligibility, that would result in the student's total resources exceeding his or her financial need by more than \$300:
- (1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than \$300, no further action is necessary.
 - (2) If the student's total resources still exceed his or her need by more than \$300, as recalculated pursuant to paragraph (d)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).
 - (3) *Federal Perkins loan and FSEOG overpayment.* If the student's total resources still exceed his or her need by more than \$300, after the institution takes the steps required in paragraphs (d)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than \$300 as an overpayment.
- (e) *Termination of FWS employment.*
- (1) An institution may fund a student's FWS employment with FWS funds only until the amount of the FWS award has been earned or until the student's financial need, as recalculated under paragraph (d)(1) of this section is met.
 - (2) Notwithstanding the provisions of paragraph (e)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed \$300.

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.*

- (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, a student is liable for any Federal Perkins loan or FSEOG overpayments made to him or her. An FSEOG overpayment for purposes of this paragraph does not include the non-Federal share of an FSEOG award if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.
- (2) The institution is liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part, 34 CFR parts 668, 674, or 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment.
- (3) A student is not liable for, and the institution is not required to attempt recovery of, a Federal Perkins loan or FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment –
 - (i) Is less than \$25; and
 - (ii) Is neither a remaining balance nor a result of the application of the overaward threshold in paragraph (d) of this section.
- (4)
 - (i) Except as provided in paragraph (f)(3) of this section, if an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.
 - (ii) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.
- (5) Except as provided in paragraph (f)(3) of this section, if a student fails to repay an FSEOG overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the FSEOG overpayment after the institution has taken the action required by paragraph (f)(4) of this section, the institution must refer the FSEOG overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

673.6 Coordination with BIA grants.

- (a) Coordination of BIA grants with Federal Perkins loans, FWS awards, or FSEOGs. To determine the amount of a Federal Perkins loan, FWS compensation, or an FSEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid –
 - (1) From resources other than the BIA education grant the student has received or is expected to receive; and
 - (2) That is consistent in type and amount with the packages prepared for students in similar circumstances who are not eligible for a BIA education grant.
- (b)
 - (1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements the student aid package specified in paragraph (a) of this section.
 - (2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.
- (c)
 - (1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted from the other assistance (except for Federal Pell Grants), not from the BIA education grant.
 - (2) The institution shall deduct the excess in the following sequence; loans, work-study awards, and grants other than Federal Pell Grants. However, the institution may change the sequence if requested to do so by a student and the institution believes the change benefits the student.
- (d) To determine the financial need of a student who is also eligible for a BIA education grant, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid

673.7 Administrative cost allowance.

- (a) An institution participating in the Federal Perkins Loan, FWS, or FSEOG programs is entitled to an administrative cost allowance for an award year if it advances funds under the Federal Perkins Loan Program, provides FWS employment, or awards grants under the FSEOG Program to students in that year.
- (b) An institution may charge the administrative cost allowance calculated in accordance with paragraph (c) of this section for an award year against –
 - (1) The Federal Perkins Loan Fund, if the institution advances funds under the federal Perkins Loan Program to students in that award year;

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- (2) The FWS allocation, if the institution provides FWS employment to students in that award year; and
 - (3) The FSEOG allocation, if the institution awards grants to students under the FSEOG program in that award year.
- (c) For any award year, the amount of the administrative cost allowance equals –
- (1) Five percent of the first \$2,750,000 of the institution's total expenditures to students in that award year under the FWS, FSEOG, and the Federal Perkins Loan programs; plus
 - (2) Four percent of its expenditures to students that are greater than \$2,750,000 but less than \$5,500,000; plus
 - (3) Three percent of its expenditures to students that are \$5,500,000 or more.
- (d) The institution shall not include, when calculating the allowance in paragraph (c) of this section, the amount of loans made under the Federal Perkins Loan Program that it assigns during the award year to the Secretary under section 463(a)(6) of the HEA.
- (e) An institution shall use its administrative costs allowance to offset its cost of administering the Federal Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.
- (f) An institution may use up to 10 percent of the administrative costs allowance, as calculated under paragraph (c) of this section, that is attributable to the institution's expenditures under the FWS program to pay the administrative costs of conducting its program of community service. These costs may include the costs of –
- (1) Developing mechanisms to assure the academic quality of a student's experience;
 - (2) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and
 - (3) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990 in the planning, development, and administration of these programs.
- (g) If an institution charges any administrative cost allowance against its Federal Perkins Loan Fund, it must charge these costs during the same award year in which the expenditures for these costs were made

PART 668 – GENERAL PROVISIONS**668.22 Treatment of title IV funds when a student withdraws.****(a) General.**

- (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (3) of this section.
- (2) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—
 - (i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and
 - (ii) No additional disbursements may be made to the student for the payment period or period of enrollment.
- (3) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(4) of this section and Sec. 668.164(g).
- (4)
 - (i)
 - (A) If outstanding charges exist on the student's account, the institution may credit the student's account in accordance with Sec. 668.164(d)(1), (d)(2), and (d)(3) with all or a portion of the post-withdrawal disbursement described in paragraph (a)(3) or this section, up to the amount of the outstanding charges.
 - (B) If Direct Loan, FFEL, or Federal Perkins Loan Program funds are used to credit the student's account, the institution must notify the student, or parent in the case of a PLUS loan, and provide an

opportunity for the borrower to cancel all or a portion of the loan, in accordance with Sec. 668.165(a)(2), (a)(3), (a)(4), and (a)(5).

- (ii) (A) The institution must offer any amount of a post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section to the student, or the parent in the case of a PLUS loan, within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, by providing a written notification to the student, or parent in the case of PLUS loan funds. The written notification must—
 - (1) Identify the type and amount of the title IV funds that make up the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section.
 - (2) Explain that the student or parent may accept or decline some or all of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section; and
 - (3) Advise the student or parent that no post-withdrawal disbursement will be made to the student or parent if the student or parent does not respond within 14 days of the date that the institution sent the notification, unless the institution chooses to make a post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) or this section.
- (B) If the student or parent submits a timely response that instructs the institution to make all or a portion of the post-withdrawal disbursement, the institution must disburse the funds in the manner specified by the student or parent within 120 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.
- (C) If the student or parent does not respond to the institution's notice, no portion of the post-withdrawal disbursement that is not credited to the student's account in accordance with (a)(4)(i) of this section may be disbursed.
- (D) If a student or parent submits a late response to the institution's notice, the institution may make the post-withdrawal disbursement as instructed by the student or parent or decline to do so.
- (E) If a student or parent submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this

section, the institution must inform the student or parent electronically or in writing concerning the outcome of the post-withdrawal disbursement request.

- (iii) A post-withdrawal disbursement must be made from available grant funds before available loan funds.
- (b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.*
- (1) For purposes of this section, for a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a leave of absence that does not meet the requirement of paragraph (d) of this section, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.
 - (2) An institution must document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (1)(3) of this section.
 - (3)
 - (i) An institution is required to take attendance if an outside entity (such as the institution's accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance.
 - (ii) If an outside entity requires an institution to take attendance for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.
- (c) *Withdrawal date for a student who withdraws from an institution that is not required to take attendance.*
- (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is--
 - (i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;
 - (ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw;
 - (iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph

- (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);
- (iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to that circumstance;
 - (v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence; or
 - (vi) If a student takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the date that the student began the leave of absence.
- (2)
 - (i) (A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) of this section by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.
 - (B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student's rescission is negated and the withdrawal date is the student's original date under paragraph (c)(1)(i) or (ii) of this section, unless a later date is determined under paragraph (c)(3) of this section.
 - (ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student's withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.
- (3)
 - (i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity provided that the institution documents that the activity is academically related and documents the student's attendance at the activity.
 - (ii) An "academically-related activity" includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling,

academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

- (4) An institution must document a student's withdrawal date determined in accordance with paragraphs (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.
- (5)
 - (i) "Official notification to the institution" is a notice of intent to withdraw that a student provides to an office designated by the institution.
 - (ii) An institution must designate one or more offices at the institution that a student may readily contact to provide official notification of withdrawal.
- (d) *Approved leave of absence.*
 - (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if--
 - (i) The institution has a formal policy regarding leaves of absence;
 - (ii) The student followed the institution's policy in requesting the leave of absence;
 - (iii) The institution determines that there is a reasonable expectation that the student will return to the school;
 - (iv) The institution approved the student's request in accordance with the institution's policy;
 - (v) The leave of absence does not involve additional charges by the institution;
 - (vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;
 - (vii) Except for a clock hour or nonterm credit hour program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and
 - (viii) If the student is a title IV, HEA program loan recipient, the institution explains to the student, prior to granting the leave of absence, the effects that the student's failure to return from a leave of absence may

have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

- (2) If a student does not resume attendance at the institution on or before the end of a leave of absence that meets the requirements of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.
 - (3) For purposes of this paragraph--
 - (i) The number of days in a leave of absence are counted beginning with the first day of the student's initial leave of absence in a 12-month period.
 - (ii) A "12-month period" begins on the first day of the student's initial leave of absence.
 - (iii) An institution's leave of absence policy is a "formal policy" if the policy--
 - (A) Is in writing and publicized to students; and
 - (B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, if the institution documents its decision and collects the written request at a later date.
- (e) *Calculation of the amount of title IV assistance earned by the student.*
- (1) *General.* The amount of title IV grant or loan assistance that is earned by the student is calculated by--
 - (i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and
 - (ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (I)(1) of this section) to the student, or on the student's behalf, for the payment period of enrollment as of the student's withdrawal date.
 - (2) *Percentage earned.* The percentage of title IV grant or loan assistance that has been earned by the student is--
 - (i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph

- (f) of this section) as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the--
 - (A) Payment period or period of enrollment for a program that is measured in credit hours; or
 - (B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program that is measured in clock hours; or
- (ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the--
 - (A) Payment period or period of enrollment for a program that is measured in credit hours; or
 - (B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program measured in clock hours.
- (3) *Percentage unearned.* The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.
- (4) *Total amount of unearned title IV assistance to be returned.* The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV that was disbursed to the student as of the date of the institution's determination that the student withdrew.
- (5) *Use of payment period or period of enrollment.*
 - (i) The treatment of title IV grant or loan funds if a student withdraws must be determined on a payment period basis for a student who attended a standard term-based (semester, trimester, or quarter) educational program.
 - (ii) (A) The treatment of title IV grant or loan funds if a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program or a nonstandard term-based educational program.
 - (B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for each of the following categories of students who withdraw from the same non-term based or nonstandard term-based educational program:

- (1) Students who have attended an educational program at the institution from the beginning of the payment period or period of enrollment.
 - (2) Students who re-enter the institution during a payment period or period of enrollment.
 - (3) Students who transfer into the institution during a payment period or period of enrollment.
- (f) *Percentage of payment period or period of enrollment completed.*
 - (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined--
 - (i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; and
 - (ii) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours--
 - (A) Completed by the student in that period as of the student's withdrawal date; or
 - (B) Scheduled to be completed as of the student's withdrawal date, if the clock hours completed in the period are not less than 70 percent of the hours that were scheduled to be completed by the student as of the student's withdrawal date.
 - (2)
 - (i) The total number of calendar days in a payment period or period of enrollment includes all days within the period, except that scheduled breaks of at least five consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period.
 - (ii) The total number of calendar days in a payment period or period of enrollment does not include days in which the student was on an approved leave of absence.
- (g) *Return of unearned aid, responsibility of the institution.*
 - (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of--
 - (i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

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- (ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student as described in paragraph (e)(3) of this section.
 - (2) For purposes of this section, “institutional charges” are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.
 - (3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, “total institutional charges incurred by the student for the payment period” is the greater of--
 - (i) The prorated amount of institutional charges for the longer period; or
 - (ii) The amount of title IV assistance retained for institutional charges as of the student’s withdrawal date.
 - (h) *Return of unearned aid; responsibility of the student.*
 - (1) After the institution has allocated the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.
 - (2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.
 - (3) The student (or parent in the case of funds due to a PLUS loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to--
 - (i) Any title IV loan program in accordance with the terms of the loan; and
 - (ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return 50 percent of the grant assistance that is the responsibility of the student to repay under this section.
 - (4)
 - (i) A student who owes an overpayment under this section remains eligible for title IV, HEA program funds through and beyond the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment if, during those 45 days the student--

- (A) Repays the overpayment in full to the institution;
 - (B) Enters into a repayment agreement with the institution in accordance with repayment arrangements satisfactory to the institution; or
 - (C) Signs a repayment agreement with the Secretary, which will include terms that permit a student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds.
- (ii) Within 30 days of the date of the institution's determination that the student withdrew, an institution must send a notice to any student who owes a title IV, HEA grant overpayment as a result of the student's withdrawal from the institution in order to recover the overpayment in accordance with paragraph (h)(4)(i) of this section.
- (iii) If an institution chooses to enter into a repayment agreement in accordance with paragraph (h)(4)(i)(B) of this section, with a student who owes an overpayment of title IV, HEA grant funds, it must--
- (A) Provide the student with terms that permit the student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds; and
 - (B) Require repayment of the full amount of the overpayment within two years of the date of the institution's determination that the student withdrew.
- (iv) An institution must refer to the Secretary, in accordance with procedures required by the Secretary, an overpayment of title IV, HEA grant funds owed by a student as a result of the student's withdrawal from the institution if--
- (A) The student does not repay the overpayment in full to the institution, or enter a repayment agreement with the institution or the Secretary in accordance with paragraph (h)(4)(i) of this section within the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment;
 - (B) At any time the student fails to meet the terms of the repayment agreement with the institution entered into in accordance with paragraph (h)(4)(i)(B) of this section; or
 - (C) The student chooses to enter into a repayment agreement with the Secretary.

- (v) A student who owes an overpayment is ineligible for title IV, HEA program funds--
 - (A) If the student does not meet the requirements in paragraph (h)(4)(i) of this section, on the day following the 45-day period in that paragraph; or
 - (B) As of the date the student fails to meet the terms of the repayment agreement with the institution or the Secretary entered into in accordance with paragraph (h)(4)(i) of this section.
 - (vi) A student who is ineligible under paragraph (h)(4)(v) of this section regains eligibility if the student and the Secretary enter into a repayment agreement.
- (i) *Order of return of title IV funds.*
- (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:
 - (i) Unsubsidized Federal Stafford loans.
 - (ii) Subsidized Federal Stafford loans.
 - (iii) Unsubsidized Federal Direct Stafford loans.
 - (iv) Subsidized Federal Direct Stafford loans.
 - (v) Federal Perkins loans.
 - (vi) Federal PLUS loans received on behalf of the student.
 - (vii) Federal Direct PLUS received on behalf of the student.
 - (2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:
 - (i) Federal Pell Grants.
 - (ii) Federal SEOG Program aid.

- (iii) Other grant or loan assistance authorized by title IV of the HEA.
- (j) *Timeframe for the return of title IV funds.*
 - (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 30 days after the date of the institution's determination that the student withdrew as defined in paragraph (l)(3) of this section.
 - (2) An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the--
 - (i) Payment period or period of enrollment, as appropriate, in accordance with paragraph (e)(5) of this section;
 - (ii) Academic year in which the student withdrew; or
 - (iii) Educational program from which the student withdrew.
- (k) *Consumer information.* An institution must provide students with information about the requirements of this section in accordance with Sec. 668.43.
- (l) *Definitions.* For purposes of this section--
 - (1) Title IV grant or loan funds that "could have been disbursed" are determined in accordance with the late disbursement provisions in Sec. 668.164(g).
 - (2) A "period of enrollment" is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).
 - (3) The "date of the institution's determination that the student withdrew" is--
 - (i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;
 - (ii) For a student who did not provide notification of his or her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;
 - (iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

- (iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.
 - (v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.
- (4) A “recipient of title IV grant or loan assistance” is a student for whom the requirements of Sec. 668.164(g)(2) have been met.

668.24 Record retention and examinations.

- (a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—
 - (1) Its eligibility to participate in the title IV, HEA programs;
 - (2) The eligibility of its educational programs for title IV, HEA program funds;
 - (3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;
 - (4) Its financial responsibility, as specified in this part;
 - (5) Information included in any application for title IV, HEA program funds; and
 - (6) Its disbursement and delivery of title IV, HEA program funds.
- (b) *Fiscal records*
 - (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.
 - (2) An institution shall establish and maintain on a current basis—
 - (i) Financial records that reflect each HEA, title IV program transaction; and
 - (ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.
- (c) *Required records.*
 - (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—
 - (i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;
 - (ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;
 - (iii) Documentation of each student's or parent borrower's eligibility for title IV, HEA program funds;

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- (iv) Documentation relating to each student's or parent borrower's receipt of title IV, HEA program funds, including but not limited to documentation of—
 - (A) The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of the grant, loan, or FWS award;
 - (B) The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;
 - (C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student; and
 - (D) The payment of any refund or overpayment to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;
 - (v) Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations;
 - (vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and
 - (vii) Documentation supporting the institution's calculations of its completion or graduation rates under Secs. 668.46 and 668.49.
- (2) In addition to the records required under this part—
- (i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;
 - (ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and
 - (iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.
- (d) *General.*
- (1) An institution shall maintain required records in a systematically organized manner.
 - (2) An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional

location designated by the Secretary or the Secretary's authorized representative.

- (3) An institution may keep required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, provided that—
 - (i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;
 - (ii) An institution shall maintain the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds in the format in which it was received by the institution, except that the SAR may be maintained in an imaged media format;
 - (iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original document;
 - (iv) Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format; and
 - (v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.
- (4) If an institution closes, stops providing educational programs, is terminated or suspended from the title IV, HEA programs, or undergoes a change of ownership that results in a change of control as described in 34 CFR 600.31, it shall provide for—
 - (i) The retention of required records; and
 - (ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative, and, for a school participating in the FFEL Program, the appropriate guaranty agency.

(e) *Record retention.*

Unless otherwise directed by the Secretary—

- (1) An institution shall keep records relating to its administration of the Federal Perkins Loan, FWS, FSEOG, or Federal Pell Grant Program for three years after the end of the award year for which the aid was awarded and disbursed under those programs, provided that an institution shall keep—

- (i) The Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, FSEOG, and FWS Programs (FISAP), and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted; and
 - (ii) Repayment records for a Federal Perkins loan, including records relating to cancellation and deferment requests, in accordance with the provisions of 34 CFR 674.19;
 - (2)
 - (i) An institution shall keep records relating to a student or parent borrower's eligibility and participation in the FFEL or Direct Loan Program for three years after the end of the award year in which the student last attended the institution; and
 - (ii) An institution shall keep all other records relating to its participation in the FFEL or Direct Loan Program, including records of any other reports or forms, for three years after the end of the award year in which the records are submitted; and
 - (3) An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of—
 - (i) The resolution of that questioned loan, claim, or expenditure; or
 - (ii) The end of the retention period applicable to the record.
- (f) *Examination of records.*
 - (1) An institution that participates in any title IV, HEA program and the institution's third-party servicer, if any, shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the institution's accrediting agency, in the conduct of audits, investigations, program reviews, or other reviews authorized by law.
 - (2) The institution and servicer must cooperate by—
 - (i) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

- (ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.
- (3) The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer—
 - (i) Refuses to allow those personnel to supply all relevant information;
 - (ii) Permits interviews with those personnel only if the institution's or servicer's management is present; or
 - (iii) Permits interviews with those personnel only if the interviews are tape recorded by the institution or servicer.
- (4) Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution or servicer promptly shall provide the requester with any information the institution or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

668.25 Contracts between an institution and a third-party servicer.

- (a) An institution may enter into a written contract with a third-party servicer for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.
- (b) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.
- (c) In a contract with an institution, a third-party servicer shall agree to—
 - (1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program;
 - (2) Refer to the Office of Inspector General of the Department of Education for investigation any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution's administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are—
 - (i) False claims by the institution for Title IV, HEA program assistance;
 - (ii) False claims of independent student status;
 - (iii) False claims of citizenship;
 - (iv) Use of false identities;
 - (v) Forgery of signatures or certifications; and
 - (vi) False statements of income;
 - (3) Be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority,

and any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

- (4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA programs) or delivers Federal Stafford Loan Program proceeds to a student—
 - (i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under Sec. 668.24; and
 - (ii) Calculate and pay refunds and repayments due a student, the Title IV, HEA program accounts, and the student's lender under the Federal Stafford Loan and Federal PLUS programs in accordance with the institution's refund policy, the provisions of Sec. 668.21 and Sec. 668.22, and applicable program regulations; and
- (5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all—
 - (i) Records in the servicer's possession pertaining to the institution's participation in the program or programs for which services are no longer provided; and
 - (ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution's students, for the purposes of the program or programs for which services are no longer provided.
- (d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program, if—
 - (1) (i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;
 - (ii) The servicer has had, during the servicer's two most recent audits of the servicer's administration of the Title IV, HEA programs, an audit finding that resulted in the servicer's being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or
 - (iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

- (2) (i) In the case of a third-party servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of Sec. 668.15) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer's potential liabilities arising from the servicer's administration of the Title IV, HEA programs; and
 - (ii) One or more persons or entities that the Secretary determines (under the provisions of Sec. 668.15) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer's administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.
- (e) (1) (i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that—
 - (A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;
 - (B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or
 - (C) A third-party servicer that administers any aspect of the institution's participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.
- (ii) The institution's notification must include the name and address of the servicer.
- (2) An institution that contracts with a third-party servicer to administer any aspect of the institution's participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer's administration of the institution's participation in any Title IV, HEA program.

668.163 Maintaining and accounting for funds.

- (a) (1) *Bank or investment account.* An institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.
- (2) For each bank or investment account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—
 - (i) Including in the name of each account the phrase "Federal Funds"; or
 - (ii) (A) Notifying the bank or investment company of the accounts that contain title IV, HEA program funds and retaining a record of that notice; and
 - (B) Except for a public institution, filing with the appropriate State or municipal government entity a UCC-1 statement disclosing that the account contains Federal funds and maintaining a copy of that statement.
- (b) *Separate bank account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank or investment account that contains no other funds if the Secretary determines that the institution failed to comply with—
 - (1) The requirements in this subpart;
 - (2) The recordkeeping and reporting requirements in subpart B of this part; or
 - (3) Applicable program regulations.
- (c) *Interest-bearing or investment account.*
 - (1) An institution must maintain the Fund described in Sec. 674.8(a) of the Federal Perkins Loan Program regulations in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on Fund proceeds are retained by the institution as part of the Fund.
 - (2) Except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

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- (3) An institution does not have to maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—
 - (i) The institution drew down less than a total of \$3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;
 - (ii) The institution demonstrates by its cash management practices that it will not earn over \$250 on those funds during the award year; or
 - (iii) The institution requests those funds from the Secretary under the just-in-time payment method.
 - (4) If an institution maintains Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial \$250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.
- (d) *Accounting and internal control systems and financial records.*
- (1) An institution must maintain accounting and internal control systems that—
 - (i) Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and
 - (ii) Identify the earnings on title IV, HEA program funds maintained in the institution's bank or investment account.
 - (2) An institution must maintain its financial records in accordance with the provisions under Sec. 668.24.
- (e) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

(Authority: 20 U.S.C. 1094)

668.164 Disbursing funds.

(a) *Disbursement.*

- (1) Except as provided in paragraph (a)(2) of this section, an institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays a student or parent directly with—
 - (i) Funds received from the Secretary;
 - (ii) Funds received from a lender under the FFEL Programs; or
 - (iii) Institutional funds used in advance of receiving title IV, HEA program funds.
- (2) If, earlier than 10 days before the first day of classes of a payment period, or for a student subject to the requirements of Sec. 682.604(c)(5) or Sec. 685.303(b)(4) earlier than 30 days after the first day of the payment period, an institution credits a student's institutional account with institutional funds in advance of receiving title IV, HEA program funds, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes, or the 30th day after the beginning of the payment period for a student subject to the requirements of Sec. 682.604(c)(5) or Sec. 685.303(b)(4).

(b) *Disbursements by payment period.*

- (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.
- (2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.
- (3) For a student enrolled in an eligible program at an institution that measures academic progress in clock hours, in determining whether the student completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence if—
 - (i) The institution has a written policy that permits excused absences; and
 - (ii) The number of excused absences under the written policy for purposes of this paragraph does not exceed the lesser of—

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- (A) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR part 600.11(b);
 - (B) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or
 - (C) Ten percent of the clock hours in the payment period.
- (4) For purposes of paragraph (b)(3) of this section, an "excused absence" is an absence that a student does not have to make up.
- (c) *Direct payments.* An institution pays a student or parent directly by—
- (1) Releasing to the student or parent a check provided by a lender to the institution under an FFEL Program;
 - (2) Issuing a check or other instrument payable to and requiring the endorsement or certification of the student or parent. An institution issues a check by—
 - (i) Releasing or mailing the check to a student or parent; or
 - (ii) Notifying the student or parent that the check is available for immediate pickup;
 - (3) Initiating an electronic funds transfer (EFT) to a bank account designated by the student or parent; or
 - (4) Dispensing cash for which an institution obtains a signed receipt from the student or parent.
- (d) *Crediting a student's account at the institution.*
- (1) Without obtaining the student's or parent's authorization under Sec. 668.165, an institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy current charges for—
 - (i) Tuition and fees;
 - (ii) Board, if the student contracts with the institution for board; and
 - (iii) Room, if the student contracts with the institution for room.
 - (2) After obtaining the appropriate authorization from a student or parent under Sec. 668.165, the institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

- (i) Current charges that are in addition to the charges described in paragraph (d)(1) of this section that were incurred by the student at the institution for educationally related activities; and
 - (ii) Minor prior award year charges if these charges are less than \$100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs.
- (3) If an institution disburses Direct Loan Program funds by crediting a student's account at the institution, the institution must first credit the student's account with those funds to pay for outstanding current and authorized charges.
- (4) For purposes of this paragraph, current charges refers to charges assessed the student by the institution for—
 - (i) The current award year; or
 - (ii) The loan period for which an institution certified or originated a loan under the FFEL or Direct Loan programs.
- (e) *Credit balances.* Whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of all title IV, HEA program funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but—
 - (1) No later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or
 - (2) No later than 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.
- (f) *Early disbursements.* Except as provided under paragraph (f)(3) of this section—
 - (1) If a student is enrolled in a credit-hour educational program that is offered in semester, trimester, or quarter academic terms, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is 10 days before the first day of classes for a payment period.
 - (2) If a student is enrolled in a credit-hour educational program that is not offered in semester, trimester, or quarter academic terms, or in a clock hour educational program the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of—
 - (i) Ten days before the first day of classes of the payment period; or

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- (ii) The date the student completed the previous payment period for which he or she received title IV, HEA program funds, except that this provision does not apply to the payment of Direct Loan or FFEL program funds under the conditions described in 34 CFR 685.301 (b)(3)(ii), (b)(5), and (b)(6) and 34 CFR 682.604 (c)(6)(ii), (c)(7), and (c)(8), respectively.
 - (3) The earliest an institution may disburse the initial installment of a loan under the Direct Loan or FFEL programs to a first-year, first-time borrower as described in 34 CFR 682.604(c) and 34 CFR 685.303(b)(4) is 30 days after the first day of the student's program of study.
- (g) *Late disbursements—*
- (1) *Ineligible student.* For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—
 - (i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or
 - (ii) For an award under the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.
 - (2) *Conditions for a late disbursement.* Except as limited under paragraph (g)(4) of this section, a student who becomes ineligible (or the student's parent in the case of a PLUS loan) qualifies for a late disbursement if, before the date the student became ineligible—
 - (i) Except in the case of a PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and
 - (ii)
 - (A) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan; or
 - (B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.
 - (3) *Making a late disbursement.* Provided that the conditions described in paragraph (g)(2) of this section are satisfied—
 - (i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under Sec. 668.22(a) (3) in accordance with the provisions of Sec. 668.22(a)(4);

- (ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV, HEA program funds that the student (or parent) was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's account to pay for current and allowable charges as described in paragraph (d) of this section, but must pay or offer any remaining amount to the student or parent; or
 - (iii) If the student did not withdraw or ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.
- (4) *Limitations.*
 - (i) Generally, an institution may make a late disbursement later than 120 days after the date of the institution's determination that the student withdrew, as provided under Sect. 668.22, or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible. On an exception basis, and with the approval of the Secretary, an institution may make a late disbursement after the applicable 120-day period, if the reason the late disbursement was not made within the 120-day period was not the fault of the student.
 - (ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan programs unless the student successfully completed the period of enrollment for which the loan was intended.
 - (iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan programs if the student was a first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under Sec. 682.604(c)(5)(i), (ii), or (iii) or Sec. 685.303(b)(4)(i)(A), (B), or (C) of this chapter.
 - (iv) An institution may not make a late disbursement of a Federal Pell Grant unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the **Federal Register**.

Part 668 Appendix D – Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the Federal Stafford Loan and Federal SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under 668.17 may avoid that sanction by demonstrating that the institution has implemented the measures included in this appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.
2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.
3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.
4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.
5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.
6. Implement a pro rata refund policy, as defined in 34 CFR 682.606(b)(2) and (c).
7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.
2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.
3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."
2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to—
 - (i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and
 - (ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.
4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Stafford Loan or SLS loan made to the borrower for enrollment at the institution.
5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:
 - (a) As part of the initial loan counseling provided to a Stafford Loan or SLS borrower—
 - (1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of Stafford and SLS loans, including—
 - (i) The stated interest rate on the borrower's loans;
 - (ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;
 - (iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and
 - (iv) 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 lender or guarantee agency to collect the loan, including attorney's fees;
 - (2) Explain the borrower's rights and responsibilities in the Stafford Loan and SLS programs including—
 - (i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;
 - (ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

- (iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and
 - (iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;
- (3) Provide to the borrower–
 - (i)
 - (A) General information on the average indebtedness of student borrowers who have obtained Stafford Loan or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or
 - (B) The estimated balance owed by the borrower on Stafford Loan and SLS loans, and the average amount of a required monthly payment based on that balance; and
 - (ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.
- (4) Review the repayment options (e.g., loan consolidation, financing) available to the borrower;
- (5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and
- (6) Provide general information on budgeting of living expenses and other aspects of personal financial management.
- (b) As part of the exit counseling provided to a Stafford Loan or SLS borrower–
 - (1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;
 - (2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

- (3) Provide the name and address of the borrower's lender(s) according to the institution's records;
 - (4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and
 - (c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.
- 6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

- 1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

Individuals with Disabilities Education Act**As Amended January 1, 1997.**

[Excerpt of applicable sections referenced in Perkins Regulations 674.51 (d), (e), (i) and (n), and in 674.56 (c)].

Part A – Sec. 602. Definitions**(3) CHILD WITH A DISABILITY-**

- (A) IN GENERAL- The term 'child with a disability' means a child –
 - (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
 - (ii) who, by reason thereof, needs special education and related services.
- (B) CHILD AGED 3 THROUGH 9- The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child –
 - (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
 - (ii) who, by reason thereof, needs special education and related services.

Part C – Sec. 632. Definitions

- (2) **COUNCIL-** The term 'council' means a State interagency coordinating council established under section 641.
- (3) **DEVELOPMENTAL DELAY-** The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).
- (4) **EARLY INTERVENTION SERVICES-** The term 'early intervention services' means developmental services that –
 - (A) are provided under public supervision;

- (B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
- (C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas –
 - (i) physical development;
 - (ii) cognitive development;
 - (iii) communication development;
 - (iv) social or emotional development; or
 - (v) adaptive development;
- (D) meet the standards of the State in which they are provided, including the requirements of this part;
- (E) include –
 - (i) family training, counseling, and home visits;
 - (ii) special instruction;
 - (iii) speech-language pathology and audiology services;
 - (iv) occupational therapy;
 - (v) physical therapy;
 - (vi) psychological services;
 - (vii) service coordination services;
 - (viii) medical services only for diagnostic or evaluation purposes;
 - (ix) early identification, screening, and assessment services;
 - (x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
 - (xi) social work services;
 - (xii) vision services;
 - (xiii) assistive technology devices and assistive technology services; and

- (xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;
- (F) are provided by qualified personnel, including –
 - (i) special educators;
 - (ii) speech-language pathologists and audiologists;
 - (iii) occupational therapists;
 - (iv) physical therapists;
 - (v) psychologists;
 - (vi) social workers;
 - (vii) nurses;
 - (viii) nutritionists;
 - (ix) family therapists;
 - (x) orientation and mobility specialists; and
 - (xi) pediatricians and other physicians;
- (G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
- (H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

(5) INFANT OR TODDLER WITH A DISABILITY- The term 'infant or toddler with a disability' –

- (A) means an individual under 3 years of age who needs early intervention services because the individual –
 - (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
 - (ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

- (B) may also include, at a State's discretion, at-risk infants and toddlers.

Part C – Sec. 635. Requirements for Statewide System

- (a) IN GENERAL- A statewide system described in section 633 shall include, at a minimum, the following components:

- (1) A definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part.

- (10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out –
- (A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;
 - (B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;
 - (C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;
 - (D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;
 - (E) the resolution of intra- and interagency disputes; and
 - (F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

Family Education Right to Privacy Act

Subpart A—General

99.1 To which educational agencies or institutions do these regulations apply?

- (a) Except as otherwise noted in Sec. 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if—
 - (1) The educational institution provides educational services or instruction, or both, to students; or
 - (2) The educational agency provides administrative control of or direction of, or performs service functions for, public elementary or secondary schools or postsecondary institutions.
- (b) This part does not apply to an educational agency or institution solely because students attending that agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.
- (c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section—
 - (1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or
 - (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).
- (d) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 444 of the General Education Provisions Act, as amended.

99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act.

"Attendance" includes, but is not limited to—

- (a) Attendance in person or by correspondence; and
- (b) The period during which a person is working under a work-study program.

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

"Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

"Educational agency or institution" means any public or private agency or institution to which this part applies under Sec. 99.1(a).

"Education records"

- (a) The term means those records that are—
 - (1) Directly related to a student; and
 - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
- (b) The term does not include:
 - (1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
 - (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Sec. 99.8.

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- (3) (i) Records relating to an individual who is employed by an educational agency or institution, that–
 - (A) Are made and maintained in the normal course of business;
 - (B) Relate exclusively to the individual in that individual's capacity as an employee; and
 - (C) Are not available for use for any other purpose.
 - (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.
 - (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are –
 - (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - (ii) Made, maintained, or used only in connection with treatment of the student; and
 - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and
 - (5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

"Party" means an individual, agency, institution, or organization.

"Personally identifiable information" includes, but is not limited to–

D-4 Appendix

- (a) The student's name;
- (b) The name of the student's parent or other family member;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number or student number;
- (e) A list of personal characteristics that would make the student's identity easily traceable;
or
- (f) Other information that would make the student's identity easily traceable.

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

99.5 What are the rights of students?

- (a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.
- (b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.
- (c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

99.6 [Removed and reserved]

Note: Section removed and reserved November 21, 1996, effective December 23, 1996.

99.7 What must an educational agency or institution include in its annual notification?

- (a)
 - (1) Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under the Act and this part.
 - (2) The notice must inform parents or eligible students that they have the right to—
 - (i) Inspect and review the student's education records;
 - (ii) Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
 - (iii) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and Sec. 99.31 authorize disclosure without consent; and
 - (iv) File with the Department a complaint under Secs. 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.
 - (3) The notice must include all of the following:
 - (i) The procedure for exercising the right to inspect and review education records.
 - (ii) The procedure for requesting amendment of records under Sec. 99.20.
 - (iii) If the educational agency or institution has a policy of disclosing education records under Sec. 99.31(a)(1), a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
- (b) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.
 - (1) An educational agency or institution shall effectively notify parents or eligible students who are disabled.
 - (2) An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

99.8 What provisions apply to records of a law enforcement unit?

- (a)
 - (1) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to—

- (i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or
 - (ii) Maintain the physical security and safety of the agency or institution.
- (2) A component of an educational agency or institution does not lose its status as a *law enforcement unit* if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.
- (b)
 - (1) Records of a law enforcement unit means those records, files, documents, and other materials that are—
 - (i) Created by a law enforcement unit;
 - (ii) Created for a law enforcement purpose; and
 - (iii) Maintained by the law enforcement unit.
 - (2) Records of a law enforcement unit does not mean—
 - (i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or
 - (ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.
- (c)
 - (1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.
 - (2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of Sec. 99.30, while in the possession of the law enforcement unit.
- (d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

Subpart B—What are the Rights of Inspection and Review of Education Records?**99.10 What rights exist for a parent or eligible student to inspect and review education records?**

- (a) Except as limited under Sec. 99.12, a parent or eligible student must be given the opportunity to inspect and review the student's education records. This provision applies to—
 - (1) Any educational agency or institution; and
 - (2) Any State educational agency (SEA) and its components.
 - (i) For the purposes of subpart B of this part, an SEA and its components constitute an educational agency or institution.
 - (ii) An SEA and its components are subject to subpart B of this part if the SEA maintains education records on students who are or have been in attendance at any school of an educational agency or institution subject to the Act and this part.
- (b) The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.
- (c) The educational agency or institution, or SEA or its component shall respond to reasonable requests for explanations and interpretations of the records.
- (d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—
 - (1) Provide the parent or eligible student with a copy of the records requested; or
 - (2) Make other arrangements for the parent or eligible student to inspect and review the requested records.
- (e) The educational agency or institution, or SEA or its component shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.
- (f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in Sec. 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

99.11 May an educational agency or institution charge a fee for copies of education records?

- (a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.
- (b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

99.12 What limitations exist on the right to inspect and review records?

- (a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.
- (b) A postsecondary institution does not have to permit a student to inspect and review education records that are—
 - (1) Financial records, including any information those records contain, of his or her parents;
 - (2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and
 - (3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—
 - (i) The student has waived his or her right to inspect and review those letters and statements; and
 - (ii) Those letters and statements are related to the student's—
 - (A) Admission to an educational institution;
 - (B) Application for employment; or
 - (C) Receipt of an honor or honorary recognition.
- (c)
 - (1) A waiver under paragraph (b)(3)(i) of this section is valid only if—
 - (i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and
 - (ii) The waiver is made in writing and signed by the student, regardless of age.

- (2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall–
 - (i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and
 - (ii) Use the letters and statements of recommendation only for the purpose for which they were intended.
- (3)
 - (i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.
 - (ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

Subpart C—What are the Procedures for Amending Education Records?

99.20 How can a parent or eligible student request amendment of the student's education records?

- (a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.
- (b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.
- (c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Sec. 99.21.

99.21 Under what conditions does a parent or eligible student have the right to a hearing?

- (a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.
- (b)
 - (1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall—
 - (i) Amend the record accordingly; and
 - (ii) Inform the parent or eligible student of the amendment in writing.
 - (2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.
- (c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—
 - (1) Maintain the statement with the contested part of the record for as long as the record is maintained; and
 - (2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Sec. 99.21 must meet, at a minimum, the following requirements:

- (a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.
- (b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.
- (c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.
- (d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
- (e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.
- (f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

99.30 Under what conditions is prior consent required to disclose information?

- (a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in Sec. 99.31.
- (b) The written consent must—
 - (1) Specify the records that may be disclosed;
 - (2) State the purpose of the disclosure; and
 - (3) Identify the party or class of parties to whom the disclosure may be made.
- (c) When a disclosure is made under paragraph (a) of this section—
 - (1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and
 - (2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

99.31 Under what conditions is prior consent not required to disclose information?

- (a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:
 - (1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.
 - (2) The disclosure is, subject to the requirements of Sec. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.
 - (3) The disclosure is, subject to the requirements of Sec. 99.35, to authorized representatives of—
 - (i) The Comptroller General of the United States;
 - (ii) The Secretary; or
 - (iii) State and local educational authorities.

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- (4) (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—
 - (A) Determine eligibility for the aid;
 - (B) Determine the amount of the aid;
 - (C) Determine the conditions for the aid; or
 - (D) Enforce the terms and conditions of the aid.
 - (ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))
 - (5) (i) The disclosure is to State and local officials or authorities to whom this information is specifically—
 - (A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or
 - (B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of Sec. 99.38.
 - (ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.
 - (6) (i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—
 - (A) Develop, validate, or administer predictive tests;
 - (B) Administer student aid programs; or
 - (C) Improve instruction.
 - (ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

- (A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
 - (B) The information is destroyed when no longer needed for the purposes for which the study was conducted.
- (iii) If this Office determines that a third party outside the educational agency or institution to whom information is disclosed under this paragraph (a)(6) violates paragraph (a)(6)(ii)(B) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.
- (iv) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.
- (7) The disclosure is to accrediting organizations to carry out their accrediting functions.
- (8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.
- (9)
 - (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.
 - (ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with—
 - (A) A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
 - (B) Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
 - (iii) If the educational agency or institution initiates legal action against a parent or student and has complied with paragraph (a)(9)(ii) of this section, it may disclose the student's education records that are relevant to the action to the court without a court order or subpoena.
- (10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.

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- (11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in Sec. 99.37.
 - (12) The disclosure is to the parent of a student who is not an eligible student or to the student.
 - (13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.
- (b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

99.32 What recordkeeping requirements exist concerning requests and disclosures?

- (a)
 - (1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.
 - (2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.
 - (3) For each request or disclosure the record must include—
 - (i) The parties who have requested or received personally identifiable information from the education records; and
 - (ii) The legitimate interests the parties had in requesting or obtaining the information.
- (b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under Sec. 99.33(b), the record of the disclosure required under this section must include—
 - (1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and
 - (2) The legitimate interests under Sec. 99.31 which each of the additional parties has in requesting or obtaining the information.
- (c) The following parties may inspect the record relating to each student:
 - (1) The parent or eligible student.

- (2) The school official or his or her assistants who are responsible for the custody of the records.
- (3) Those parties authorized in Sec. 99.31(a) (1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.
- (d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to—
 - (1) The parent or eligible student;
 - (2) A school official under Sec. 99.31(a)(1);
 - (3) A party with written consent from the parent or eligible student;
 - (4) A party seeking directory information; or
 - (5) A party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

99.33 What limitations apply to the redisclosure of information?

- (a)
 - (1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.
 - (2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.
- (b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if—
 - (1) The disclosures meet the requirements of Sec. 99.31; and
 - (2) The educational agency or institution has complied with the requirements of Sec. 99.32(b).
- (c) Paragraph (a) of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas under Sec. 99.31(a)(9), to disclosures of directory information under Sec. 99.31(a)(11), or to disclosures to a parent or student under Sec. 99.31(a)(12).

- (d) Except for disclosures under Sec. 99.31(a) (9), (11), and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.
- (e) If this Office determines that a third party improperly rediscloses personally identifiable information from education records in violation of Sec. 99.33(a) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

- (a) An educational agency or institution that discloses an education record under Sec. 99.31(a)(2) shall—
 - (1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—
 - (i) The disclosure is initiated by the parent or eligible student; or
 - (ii) The annual notification of the agency or institution under Sec. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;
 - (2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
 - (3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.
- (b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—
 - (1) The student is enrolled in or receives services from the other agency or institution; and
 - (2) The disclosure meets the requirements of paragraph (a) of this section.

99.35 What conditions apply to disclosure of information for Federal or State program purposes?

- (a) The officials listed in Sec. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

- (b) Information that is collected under paragraph (a) of this section must–
 - (1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and
 - (2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.
- (c) Paragraph (b) of this section does not apply if–
 - (1) The parent or eligible student has given written consent for the disclosure under Sec. 99.30; or
 - (2) The collection of personally identifiable information is specifically authorized by Federal law.

99.36 What conditions apply to disclosure of information in health and safety emergencies?

- (a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- (b) Nothing in this Act or this part shall prevent an educational agency or institution from–
 - (1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;
 - (2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or
 - (3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.
- (c) Paragraphs (a) and (b) of this section will be strictly construed.

99.37 What conditions apply to disclosing directory information?

- (a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of—
 - (1) The types of personally identifiable information that the agency or institution has designated as directory information;
 - (2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and
 - (3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.
- (b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

99.38 What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974 concerning the juvenile justice system?

- (a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Sec. 99.31(a)(5)(i)(B).
- (b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.

Subpart E—What are the Enforcement Procedures?

99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

- (a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.
- (b) The Secretary designates the Office to—
 - (1) Investigate, process, and review complaints and violations under the Act and this part; and
 - (2) Provide technical assistance to ensure compliance with the Act and this part.
- (c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

99.62 What information must an educational agency or institution submit to the Office?

The office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

99.63 Where are complaints filed?

A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605.

99.64 What is the complaint procedure?

- (a) A complaint filed under Sec. 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.
- (b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.
- (c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

- (d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

99.65 What is the content of the notice of complaint issued by the Office?

- (a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under Sec. 99.64(b). The notice to the educational agency or institution—
 - (1) Includes the substance of the alleged violation; and
 - (2) Asks the agency or institution to submit a written response to the complaint.
- (b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of Sec. 99.64.

99.66 What are the responsibilities of the Office in the enforcement process?

- (a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.
- (b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.
- (c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section—
 - (1) Includes a statement of the specific steps that the agency or institution must take to comply; and
 - (2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

99.67 How does the Secretary enforce decisions?

- (a) If the educational agency or institution does not comply during the period of time set under Sec. 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act—
 - (1) Withhold further payments under any applicable program;
 - (2) Issue a complaint to compel compliance through a cease-and-desist order; or
 - (3) Terminate eligibility to receive funding under any applicable program.

- (b) If, after an investigation under Sec. 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

Appendix

Note: Appendix from final rule of November 21, 1996, effective December 23, 1996.

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Model Notification of Rights Under FERPA for Elementary and Secondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. They are:

- (1) The right to inspect and review the student's education records within 45 days of the day the District receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

- (2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading.

Parents or eligible students may ask Alpha School District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

- (3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the District has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the District discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [Note: FERPA requires a school district to make a reasonable attempt to notify the student of the records request unless it states in its annual notification that it intends to forward records on request.]

- (4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the District to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-4605

[Note: In addition, a school may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

Model Notification of Rights Under FERPA for Postsecondary Institutions

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

- (1) The right to inspect and review the student's education records within 45 days of the day the University receives a request for access.

Students should submit to the registrar, dean, head of the academic department, or other appropriate official, written requests that identify the record(s) they wish to inspect. The University official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the University official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.

- (2) The right to request the amendment of the student's education records that the student believes are inaccurate or misleading.

Students may ask the University to amend a record that they believe is inaccurate or misleading. They should write the University official responsible for the record, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the University decides not to amend the record as requested by the student, the University will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

- (3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the University discloses education records without consent to officials of another school, upon request, in which a student seeks or intends to enroll. [Note: FERPA requires an institution to make a reasonable attempt to notify the student of the records request unless the institution states in its annual notification that it intends to forward records on request.]

- (4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by State University to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC, 20202-4605

[Note: In addition, an institution may want to include its directory information public notice, as required by Sec. 99.37 of the regulations, with its annual notification of rights under FERPA.]

Fair Credit Reporting Act

(As of December 13, 1999)

The following is a selection of sections in the Fair Credit Reporting Act (FCRA) relevant to schools and servicers. This version uses FCRA section numbers (§§ 601-625) in the headings. (The relevant U.S. Code citation is included with each section heading and each reference to the FCRA in the text.). To see the entire Act, please go to <http://www.ftc.gov/os/statutes/fcra.pdf> on the web.

§ 605. Requirements relating to information contained in consumer reports [15 U.S.C. § 1681c]

- (a) Information excluded from consumer reports. Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:
 - (1) Cases under title 11 [United States Code] or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.
 - (2) Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
 - (3) Paid tax liens which, from date of payment, antedate the report by more than seven years.
 - (4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.¹
 - (5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.¹
- (b) Exempted cases. The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with
 - (1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;
 - (2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or
 - (3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more.

¹ The reporting periods have been lengthened for certain adverse information pertaining to U.S. Government insured or guaranteed student loans, or pertaining to national direct student loans. See sections 430A(f) and 463(c)(3) of the Higher Education Act of 1965, 20 U.S.C. 1080a(f) and 20 U.S.C. 1087cc(c)(3), respectively.

- (c) Running of reporting period.
 - (1) In general. The 7-year period referred to in paragraphs (4) and (6)² of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.
 - (2) Effective date. Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996.
- (d) Information required to be disclosed. Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11, United States Code, shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.
- (e) Indication of closure of account by consumer. If a consumer reporting agency is notified pursuant to section 623(a)(4) [§ 1681s-2] that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.
- (f) Indication of dispute by consumer. If a consumer reporting agency is notified pursuant to section 623(a)(3) [§ 1681s-2] that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

§ 611. Procedure in case of disputed accuracy [15 U.S.C. § 1681i]

- (a) Reinvestigations of disputed information.
 - (1) Reinvestigation required.
 - (A) In general. If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

² Should read "paragraphs (4) and (5)...." Prior Section 605(a)(6) was amended and re-designated as Section 605(a)(5) in November 1998.

- (B) Extension of period to reinvestigate. Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.
 - (C) Limitations on extension of period to reinvestigate. Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.
- (2) Prompt notice of dispute to furnisher of information.
 - (A) In general. Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer.
 - (B) Provision of other information from consumer. The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).
- (3) Determination that dispute is frivolous or irrelevant.
 - (A) In general. Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.
 - (B) Notice of determination. Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.
 - (C) Contents of notice. A notice under subparagraph (B) shall include
 - (i) the reasons for the determination under subparagraph (A); and
 - (ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

- (4) Consideration of consumer information. In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.
- (5) Treatment of inaccurate or unverifiable information.
 - (A) In general. If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation.
 - (B) Requirements relating to reinsertion of previously deleted material.
 - (i) Certification of accuracy of information. If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.
 - (ii) Notice to consumer. If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.
 - (iii) Additional information. As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion
 - (I) a statement that the disputed information has been reinserted;
 - (II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and
 - (III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.
 - (C) Procedures to prevent reappearance. A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is

deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

- (D) Automated reinvestigation system. Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.
- (6) Notice of results of reinvestigation.
- (A) In general. A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.
 - (B) Contents. As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)
 - (i) a statement that the reinvestigation is completed;
 - (ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;
 - (iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;
 - (iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and
 - (v) a notice that the consumer has the right to request under subsection (d) that the consumer reporting agency furnish notifications under that subsection.
- (7) Description of reinvestigation procedure. A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iii) by not later than 15 days after receiving a request from the consumer for that description.

- (8) Expedited dispute resolution. If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency
 - (A) provides prompt notice of the deletion to the consumer by telephone;
 - (B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) that the agency furnish notifications under that subsection; and
 - (C) provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.
- (b) Statement of dispute. If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.
- (c) Notification of consumer dispute in subsequent consumer reports. Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.
- (d) Notification of deletion of disputed information. Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

§ 615. Requirements on users of consumer reports [15 U.S.C. § 1681m]

- (a) Duties of users taking adverse actions on the basis of information contained in consumer reports. If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall
 - (1) provide oral, written, or electronic notice of the adverse action to the consumer;
 - (2) provide to the consumer orally, in writing, or electronically

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- (A) the name, address, and telephone number of the consumer reporting agency including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - (B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
 - (3) provide to the consumer an oral, written, or electronic notice of the consumer's right
 - (A) to obtain, under section 612 [§ 1681j], a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and
 - (B) to dispute, under section 611 [§ 1681i], with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.
 - (b) Adverse action based on information obtained from third parties other than consumer reporting agencies.
 - (1) In general. Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.
 - (2) Duties of person taking certain actions based on information provided by affiliate.
 - (A) Duties, generally. If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall
 - (i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and
 - (ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (I), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

- (B) Action described. An action referred to in subparagraph (A) is an adverse action described in section 603(k)(1)(A) [§ 1681a], taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 603(k)(1)(B) [§ 1681a].
- (C) Information described. Information referred to in subparagraph (A)
 - (i) except as provided in clause (ii), is information that (I) is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control to the person taking the action; and (II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and
 - (ii) does not include (I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or (II) information in a consumer report.
- (c) Reasonable procedures to assure compliance. No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.
- (d) Duties of users making written credit or insurance solicitations on the basis of information contained in consumer files.
 - (1) In general. Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 604(c)(1)(B) [§ 1681b], shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that
 - (A) information contained in the consumer's consumer report was used in connection with the transaction;
 - (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;
 - (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;
 - (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and

- (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [§ 1681b].
- (2) Disclosure of address and telephone number. A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 604(e) [§ 1681b].
- (3) Maintaining criteria on file. A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.
- (4) Authority of federal agencies regarding unfair or deceptive acts or practices not affected. This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

§ 616. Civil liability for willful noncompliance [15 U.S.C. § 1681n]

- (a) In general. Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of
 - (1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or
 - (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;
 - (2) such amount of punitive damages as the court may allow; and
 - (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (b) Civil liability for knowing noncompliance. Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.
- (c) Attorney's fees. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 617. Civil liability for negligent noncompliance [15 U.S.C. § 1681o]

- (a) In general. Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of
 - (1) any actual damages sustained by the consumer as a result of the failure;
 - (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (b) Attorney's fees. On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 623. Responsibilities of furnishers of information to consumer reporting agencies [15 U.S.C. § 1681s-2]

- (a) Duty of furnishers of information to provide accurate information.
 - (1) Prohibition.
 - (A) Reporting information with actual knowledge of errors. A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.
 - (B) Reporting information after notice and confirmation of errors. A person shall not furnish information relating to a consumer to any consumer reporting agency if
 - (i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and
 - (ii) the information is, in fact, inaccurate.
 - (C) No address requirement. A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.
 - (2) Duty to correct and update information. A person who
 - (A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

- (B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

- (3) Duty to provide notice of dispute. If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.
- (4) Duty to provide notice of closed accounts. A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.
- (5) Duty to provide notice of delinquency of accounts. A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

(b) Duties of furnishers of information upon notice of dispute.

- (1) In general. After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall
- (A) conduct an investigation with respect to the disputed information;
- (B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681i];
- (C) report the results of the investigation to the consumer reporting agency; and
- (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

- (2) **Deadline.** A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) [§ 1681i] within which the consumer reporting agency is required to complete actions required by that section regarding that information.
- (c) **Limitation on liability.** Sections 616 and 617 [§§ 1681n and 1681o] do not apply to any failure to comply with subsection (a), except as provided in section 621(c)(1)(B) [§ 1681s].
- (d) **Limitation on enforcement.** Subsection (a) shall be enforced exclusively under section 621 [§ 1681s] by the Federal agencies and officials and the State officials identified in that section.

Key Dates	Changes in regulations required the use of new promissory notes on the following dates:
<i>April 13, 1970</i>	<ul style="list-style-type: none"> – <i>New cancellation for military service.</i>
<i>July 1, 1972</i>	<ul style="list-style-type: none"> – <i>Program changed from National Defense to National Direct Student Loan Program.</i> – <i>Minimum payment increased from \$15 to \$30 per month.</i> – <i>New cancellation benefits for teachers of the handicapped and for Head Start program.</i> – <i>No deferments for less-than-half-time student status.</i> – <i>Cancellation for military service is restricted to service in a combat zone.</i>
<i>September 1979</i>	<ul style="list-style-type: none"> – <i>Borrower must repay the loan in equal quarterly, bimonthly, or monthly amounts as the institution chooses; the borrower may request a graduated plan (August 13, 1979, Federal Register).</i>
<i>October 1, 1980</i>	<ul style="list-style-type: none"> – <i>Grace period reduced from nine to six months.</i> – <i>Six months grace period after all deferments except hardship.</i> – <i>New definitions of "handicapped" children.</i> – <i>Four new deferments: officer in the CCPHS, volunteer in tax exempt organizations, temporarily totally disabled or caring for a disabled spouse, and required internships.</i> – <i>Repayment can be extended another 10 years for low-income individuals.</i>
<i>July 1, 1981</i>	<ul style="list-style-type: none"> – <i>Interest rate changes from 3 percent to 4 percent.</i> – <i>Optional collection clause includes 25 percent maximum.</i>
<i>October 1, 1981</i>	<ul style="list-style-type: none"> – <i>Interest rate changes from 4 percent to 5 percent.</i> – <i>Defaulted loans can be reported to credit bureaus.</i>

July 1, 1987

- Program name changed from National Direct Student Loan Program to Perkins Loan Program.

Perkins notes: **(Published in December 1, 1987, Federal Register.)**

1. Grace period changes from six to nine months.
2. Three new deferments: member of the NOAAC, parental leave, mother of preschool children re-entering the work force.
3. New cancellation for Peace Corps and VISTA.
4. Mandatory late-charge provision.
5. Mandatory collection cost provision – no 25 percent maximum.
6. School can round payment amount to the next higher dollar amount that is a multiple of \$5.
7. No requirement to **attach** repayment schedule to the note.

Direct notes:

1. Mandatory late-charge provision.
2. Mandatory collection cost provision – no 25 percent maximum.
3. No requirement to **attach** repayment schedule to the note.

November 29, 1990

- New cancellation for Law Enforcement/Corrections Officers. The school must have a signed addendum to the promissory note only for advances made May 6, 1991, and after. This is the date that the addendum was published (Dear Colleague Letter CB-91-6).

December 1990

- The Department revised promissory notes with its Dear Colleague Letter CB-90-24 (LD) of December 1990. The new promissory notes do not represent any change in policy from the notes published in the December 1, 1987, regulations. Rather, the changes correct typographical errors and clarify requirements for handling prepayments made by borrowers. The use of these new notes is encouraged but not required.

July 23, 1992

- *Program name is changed to Federal Perkins Loan Program.*
- *New cancellations for full-time teaching in a field of expertise or in a shortage area.*
- *New cancellation for full-time teaching in special education (replaced definition of "handicapped children").*
- *New cancellations for employment as a nurse or medical technician in a child- or family-service agency, or as a qualified professional provider of early intervention services.*
- *Schools are required to report all loans to a credit bureau at the time of disbursement.*
- *Borrower's right to forbearance; however this right cannot be exercised until publication of regulations by the Secretary of Education. Final regulations were published November 30, 1994, with an effective date of July 1, 1995.*
- **Note:** *Schools not required to issue new promissory notes but must inform borrowers of new provisions.*

October 1, 1992

- *The minimum monthly payment option is increased to \$40 (from \$30) for loans made on or after October 1, 1992, to borrowers who, on the date the loan was made, have no outstanding balance of principal or interest owing on any loan made under Part E. (Note: Schools exercising the minimum provision were required to issue new promissory notes with the new amount for the borrowers described in this paragraph. However, the Department did not publish a new note until May 1993 for use with loans disbursed July 1, 1993, and after.)*

July 1, 1993

- *Loans made on or after July 1, 1993 can receive deferments only for unemployment, economic hardship, service eligible for cancellation and at least half-time student status (including graduate fellowship, rehabilitation training, postgraduate study abroad and residency program in dentistry). All other deferments are eliminated for these loans.*

- October 1, 1998** – *Any period (up to three years) during which a Direct or Perkins borrower who is a member of the reserves is called or ordered to active duty for 30 days or more must be excluded from the initial grace period.*

***Note:** As of the initial publication of this manual, the Department had not issued a new Perkins promissory note. New benefits should be outlined in an addendum attached to the current note.*

- October 7, 1998** – *Borrowers with loans made before July 1, 1993 are eligible for deferment benefits that became effective on or after July 1, 1993.*
- *All borrowers are eligible for all cancellations, regardless of when the loan was made or of the provisions in their promissory note.*

***Note:** As of the initial publication of this manual, the Department had not issued a new Perkins promissory note. New benefits should be outlined in an addendum attached to the current note.*

- October 8, 1998** – *For petitions filed October 8, 1998, or after, the bankruptcy code eliminates a borrower's ability to discharge a loan on the basis of the loan being in repayment more than seven years, and requires all borrowers who seek discharge of a Perkins loan to prove undue hardship.*

- July 1, 2000** – *New closed school discharge provision (see 674.33) for loans made on or after January 1, 1986.*
- *New loan rehabilitation program (see 674.39).*

- July 1, 2001** – *Death – To discharge a loan if the borrower dies, the school must have an original or certified copy of the death certificate.*
- *Total & Permanent Disability – New definition for total and permanent disability. The requirement that the borrower be unable to attend school was removed.*

- May 1, 2002** – *New Federal Perkins and National Direct promissory notes (published in Dear Colleague Letter CB-01-15). The new notes now include provisions (previously published) but were outlined in an addendum.*
- *Rehabilitation*
- *Student Loan Ombudsman*

- *Closed School Discharge*
- *Grace Periods for Active Duty Borrowers*
- *Instructions on printing and some additional information can be found in Dear Colleague Letter CB-01-13.*
- July 1, 2002*
 - *Total and Permanent Disability – Establish a conditional period, of up to three (3) years, where the loan is assigned to the Secretary for determination of Total and Permanent disability.*
 - *Loans assigned to the Department during a conditional discharge period for total and permanent disability are removed from a school's cohort default rate.*
- November 1, 2002*
 - *Borrowers are no longer entitled to rehabilitation of a defaulted loan if a judgment has been secured.*
 - *Late charges are no longer mandatory.*
 - *Increased write-off amount to less than \$25.00, and less than \$50.00 if the borrower has been billed for this balance at least two years.*
 - *Language added to allow for a Master Promissory Note. As of November 1, 2002, the Master Promissory Note is still in draft form.*

Deferment Provisions — Federal Perkins Loans

(from the Department of Education's Instructor's Guide)

Deferment Condition	Federal Perkins/ National Direct Disbursed on or after 07/01/93	Federal Perkins Disbursed before 07/01/93 & on or after 07/01/87	National Direct Disbursed before 07/01/93 & on or after 10/01/80	National Direct Disbursed before 10/01/80	National Defense
Half-time enrollment	No limit*	No limit*	No limit*	No limit*	No limit*
Less than half-time enrollment as a regular student	N/A	N/A	N/A	N/A	3 years**
Rehabilitation training	No limit*	No limit*	No limit*	No limit*	No limit*
Graduate fellowship study ¹	No limit*	No limit*	No limit*	No limit*	No limit*
Eligible internship or residency program	see note 15	2 years* ²	2 years* ³	N/A	N/A
Inability to secure full-time employment	3 years*	3 years*	3 years*	3 years*	3 years*
Economic hardship ⁴	3 years*	3 years*	3 years*	3 years*	3 years*
Hardship as determined by school	N/A	No limit**	No limit**	No limit**	No limit**
Law enforcement/correction officer***	see note 5*	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6
Peace Corps/ACTION program volunteer***	see note 5*	3 years*	3 years*	3 years*	3 years*
Full-time volunteer for tax-exempt organization in service comparable to Peace Corps or ACTION	N/A	3 years*	3 years*	N/A	N/A
U.S. Armed Services***	see note 5*	3 years*	3 years*	3 years*	3 years*
Officer in Commissioned Corps of U.S. Public Health Service***	N/A	3 years*	3 years*	N/A	N/A
National Oceanic and Atmospheric Administration Corps***	N/A	3 years*	N/A	N/A	N/A
Nurse/medical technician providing health services***	see note 5*	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6
Temporary total disability for borrower or spouse ⁸	N/A	3 years*	3 years*	N/A	N/A

Deferment Condition	Federal Perkins/ National Direct Disbursed on or after 07/01/93	Federal Perkins Disbursed before 07/01/93 & on or after 07/01/87	National Direct Disbursed before 07/01/93 & on or after 10/01/80	National Direct Disbursed before 10/01/80	National Defense
Temporary total disability or care for temporarily totally disabled spouse/dependent	N/A	3 years*	3 years*	N/A	N/A
Pregnancy, care of new born or newly adopted child ⁹	N/A	6 months*	N/A	N/A	N/A
Mother of preschooler working or returning to work ¹⁰	N/A	1 year*	N/A	N/A	N/A
Employment in educational component of Head Start Program***	see note 5*	see note 5	see note 5	see note 5	see note 5
Teacher in designated low-income school***	see note 5*	see notes 5 & 12	see notes 5 & 12	see notes 5 & 12	see notes 5 & 12
Teacher of special education, including teacher of infants, toddlers, children or youth with disabilities ^{11***}	see note 5*	see notes 5 & 12	see notes 5 & 12	see notes 5 & 12	see notes 5 & 12
Provider of early intervention services ^{13***}	see note 5*	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6
Teacher of mathematics, science, foreign languages, bilingual education or other field of expertise determined by state education agency to have a shortage of qualified teachers***	see note 5*	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6
Provider or supervisor of provision of services to high-risk children from low-income communities and their families ^{14***}	see note 5*	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6	see notes 5 & 6

* Principal need not be paid, and interest does not accrue.

** Principal and interest may be deferred, but interest continues to accrue.

*** Employment or service must be full time.

F-8 Appendix

1. A deferment request from a borrower enrolled in a graduate or postgraduate fellowship-supported program outside of the U.S. is approved until the completion of the fellowship period.
2. The internship program must require that the borrower have a bachelor's degree before being admitted. In addition, the program must be required by a state licensing agency for certification for professional practice or service, or the program must lead to a postgraduate degree or certificate from a postsecondary school, hospital or health-care facility.
3. The internship program must require that the borrower have a bachelor's degree before being admitted. The program must be required by the state licensing agency for certification for professional practice or service.
4. A borrower is considered to have an economic hardship if the borrower:
 - a. Is working full-time but earning an amount that does not exceed (the greater of):
 1. The federal minimum wage, or
 2. An amount equal to 100% of the poverty line for a family of two as determined according to section 673(2) of the Community Service Block Grant Act, or
 - b. Meets other regulatory criteria that take into account the borrower's debt-to-income ratio as a primary factor.
5. Deferment is for period in which borrower is engaged in service eligible for Federal Perkins Loan cancellation.
6. Service must begin on or after 10/7/98.
7. For loans made on or after 7/1/93, military service must be in an area that qualifies for hazardous-duty pay.
8. Applies to borrower or care of spouse only. Does not allow deferment for the care of temporarily totally disabled dependent.
9. Borrower must not be attending an eligible postsecondary institution or be gainfully employed. Deferment must begin within six months after the borrower ceased to be enrolled at least half-time at an eligible institution.
10. Borrower's salary must not be more than \$1 over the minimum hourly wage rate.
11. Infants, toddlers, children and youth with disabilities are defined in Section S 602(a)(1) and 672(1) of the Individuals with Disabilities Education Act.
12. Includes teachers of the handicapped in elementary or secondary school system.
13. Must be employed in a public or nonprofit program under public supervision. A qualified professional provider of early intervention services is defined in Section 672(2) of the Individuals with Disabilities Education Act.
14. Must be employed in a public or nonprofit child or family-services agency. High-risk children are defined as individuals under the age of 21 who: are low-income; have been or are at risk of being abused or neglected; have serious emotional, mental or behavioral disturbances; reside in placements outside of their homes; or are involved in the juvenile justice system. Low-income communities are defined as those communities in which there is a high concentration of children eligible to be counted under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965.
15. Borrowers with loans disbursed on or after 7/1/93 may receive this deferment only for an internship or residency program in dentistry. The maximum is 2 years.

Campus Partners Deferment Codes — Federal Perkins Loans

A	Armed Forces
B	Dependent care
C	U.S. Public Health Service
D	Temporary total disability
E	Internship/residency
G	Grace deferment
H	Hardship
I	Internship/residency preceding professional practice
K	Economic hardship
L	Parental leave
M	Forbearance
N	Volunteer service
O	NOAA
P	Peace Corps
R	Desert Storm reservist
S	Student
U	Unemployment
V	VISTA
W	Working mothers
Z	Deferment before cancellation benefits

Cancellation Provisions — Federal Perkins Loans*(from the Department of Education's Instructor's Guide)*

Cancellation Criteria	Federal Perkins/ National Direct Made on or after 07/23/92	Federal Perkins Made prior to 07/23/92	National Direct Made prior to 07/23/92	National Defense
Total and permanent disability or death of borrower ¹	100%	100%	100%	100%
Full-time employment in a Head Start Program ²	100%	100%	100%	100% ¹⁷
Full-time law enforcement or correction officer ³	100%	100% ¹⁷	100% ¹⁷	100% ¹⁷
Full-time teaching in low-income school eligible for funding under Chapter 1 of the Education Consolidation and Improvement Act of 1981 ⁶	100% ⁵	100% ⁵	100% ⁵	100% ⁷
Full-time special education teacher, including teacher of infants, toddlers, children or youth with disabilities ⁸	100% ⁵	100% ^{5/9}	100% ^{5/9}	100% ^{7/9}
Full-time provider of early intervention services in a public or nonprofit program under public supervision ¹⁰	100% ³	100% ^{3/17}	100% ^{3/17}	100% ^{3/17}
Full-time teacher of handicapped students in a public or nonprofit elementary/secondary school	N/A	100% ^{5/9}	100% ^{5/9}	100% ^{7/9}
Full-time teacher of mathematics, science, foreign languages, bilingual education, or any field or expertise determined by the state education agency to have a shortage of qualified teachers ⁵	100%	100% ¹⁷	100% ¹⁷	100% ¹⁷
Provider or supervisor of provision of services to high-risk children from low-income communities and their families ^{3/11**}	100%	100% ¹⁷	100% ¹⁷	100% ¹⁷
Nurse or medical technician providing health care services ^{5*}	100%	100% ¹⁷	100% ¹⁷	100% ¹⁷
Peace Corps or ACTION programs volunteer ¹²	70%	70%	70%	70%
Service in U.S. Armed Forces	50% ¹³	50% ¹³	50% ¹³	50% ¹⁴
Full-time teaching in Public/ Nonprofit elementary/ secondary school, institution of higher education or overseas Department of Defense elementary/secondary school	N/A	N/A	N/A	50% ¹⁵
Bankruptcy ¹⁶	In some cases	In some cases	In some cases	In some cases

* Employment must be full time.

1. Effective 7/1/95 total and permanent disability is defined as the borrower's inability to work and earn money or to attend school because of an impairment that is expected to continue indefinitely or to result in the borrower's death.
2. Cancellation rate is 15% per year.
3. Cancellation rate is: 15% per year for first and second years; 20% per year for third and fourth years; 30% for fifth year.
4. Applies only to loans made on or after 11/29/90.
5. Cancellation rate is: 15% per academic year for first and second years; 20% per academic year for third and fourth years; and 30% for fifth year.
6. If borrower teaches at a school that does not qualify as a low-income school in a subsequent year, the borrower remains eligible for loan cancellation as long as the borrower continues to teach full-time at the school.
7. Cancellation rate is 15% per academic year.
8. Infants, toddlers, children and youth with disabilities are defined in Section 602(a)(1) and 672(1) of the Individuals with Disabilities Education Act.
9. Includes full-time teaching of handicapped children in a public or nonprofit elementary or secondary school system.
10. A qualified professional provider of early intervention services is defined in Section 672(2) of the Individuals with Disabilities Education Act.
11. Must be employed in public or nonprofit child or family services agency. High-risk children are defined as individuals under the age of 21 who: are low-income have been or are at risk of being abused or neglected; have serious emotional, mental or behavioral disturbances; reside in placements outside of their homes; or are involved in the juvenile justice system. Low-income communities are defined as those communities in which there is a high concentration of children eligible to be counted under Chapter 1 of the Elementary and Secondary Education Act of 1965.
12. Cancellation applies only to Federal Perkins Loans; does not apply to National Direct Loans. Cancellation rate is 15% per year for first and second years, and 20% per year for third and fourth years.
13. Military service must be in an area that qualifies for hazardous-duty pay. Cancellation rate is 12.5% per year of qualifying service.
14. Cancellation rate is 12.5% per year of consecutive service.
15. Cancellation rate is 10% per academic year.
16. Loan is canceled only if collection is stayed by a bankruptcy court. If the loan is not ultimately discharged in bankruptcy, it again becomes the borrower's obligation.
17. Service must begin on or after 10/7/98.

Campus Partners Cancellation Codes — Federal Perkins Loans

B0	Bankruptcy
D0	Death
E0	Disability
F1	15% — Teaching (base 2)
H4	Nurse/Medical technician
L4	15%, 20%, 30% — Law enforcement (base 4)
M2	12½% — Military (base 2)
M3	12½% — Military (base 3)
P3	15% — Preschool (base 3)
R4	High-risk children
S4	Teaching in shortage field
T1	10% — Teaching (base 1)
T3	15%, 20%, 30% — Teaching (base 3)
V4	15%, 20% — Volunteer (base 4)

Notes on Bankruptcy

Note 1 – Because of statutory changes enacted by (public laws) P.L. 101-508 and P.L. 101-647, Chapter 13 bankruptcies filed on or after November 5, 1990, and before May 28, 1991, cannot be discharged if the loan has not been in repayment for five years. For petitions filed on or after May 28, 1991, the loan must have been in repayment for seven years before it can be discharged.

The rules applicable to the educational loan exemption in the Chapter 7 context now also apply to Chapter 13 because they now rely on the same statutory exception.

The education loan exception available in Chapter 13 bankruptcies means that institutions no longer are required to object to the confirmation of the Chapter 13 plan because the costs to oppose the confirmation of the plan will exceed one-third of the amount that would be lost by discharge.

Institutions still must file a proof of claim and monitor the debtor's compliance with the confirmed plan.

Note 2 – 11 U.S.C. 1307, 1325 and 1328(b) are laws applicable to bankruptcy cases in general, not just to Federal Perkins bankruptcy cases.

11 U.S.C. 1307 concerns the dismissal of a Chapter 13 case or the conversion of a case filed under Chapter 13 to a Chapter 7 proceeding.

11 U.S.C. 1325 concerns the confirmation by the court of a borrower's proposed repayment plan.

11 U.S.C. 1328(b) concerns the discharge of debts. Institutions should consult legal counsel for the best advice on how to proceed when a borrower files for bankruptcy.

PAST DUE PROCESSING OPTIONS

	Regulation	Note dates on or after July 1, 1993			Note dates before July 1, 1993		
		ion	Limit	process	Documentation	Limit	Campus Partners process
Seeking and Unable to Find Full-Time Employment (i.e., at least three consecutive months at 30 hours a week)	§674.34(d)	Documentation satisfactory to the institution	Three years	Deferment type U	Same	Same	Same
Economic Hardship (EH)	§674.34(e)	Documentation satisfactory to the institution	Three years	Deferment type K	Same	Same	Same
• Received EH under FDSLP or FFELP or	§674.34(e)(1)						
• Receiving payments under state or federal assistance programs, or	§674.34(e)(2)						
• Working full time but Total Monthly Gross Income (TMGI) does not exceed greater of minimum wage or 100 percent of poverty line for family of two, or	§674.34(e)(3)	<ul style="list-style-type: none"> • Proof of income (pay statement) • Full time = 30 hours for three consecutive months • If subsequent deferment period begins less than one year from end of previous period, copy of income tax return if filed within eight months from date deferment is 					

Appendix F-15

Provision	Regulation	Note dates on or after July 1, 1993			Note dates before July 1, 1993		
		Documentation	Limit	Campus Partners process	Documentation	Limit	Campus Partners process
		requested					
<ul style="list-style-type: none"> • TMGI does not exceed twice the greater of minimum wage or poverty line for family of two, and TMGI minus monthly payments on Title IV loans does not exceed the greater of minimum wage or poverty line, or • Working full time and Federal education loan payments are equal to or greater than 20 percent of TMGI, and TMGI minus loan payments is less than 220 percent of greater of minimum wage or poverty line 	<p>§674.34(e)(4)</p> <p>§674.34(e)(5)</p>	<ul style="list-style-type: none"> • Proof of income (most recent pay statement), and • Proof of amounts owed on Title IV loans based on 10-year repayment term [see §674.34(e)(9)] • Working full time = 30 hours a week for three consecutive months • Proof of income (most recent pay statement), and • Proof of amounts owed on Title IV loans based on 10-year repayment term [see §674.34(e)(9)] 					
<p>Reduce Payment Amount</p> <p>Hardship: prolonged illness or unemployment</p>	§674.33(b)(5)	<ul style="list-style-type: none"> • Affidavit from doctor (or other proof of medical condition) or • Proof of receiving unemployment benefits 	<ul style="list-style-type: none"> • Unlimited • Regular schedule must be the minimum • Cannot exceed 	<ul style="list-style-type: none"> • Temporary special billing for reduced amount or • Reduce minimum amount 	Same	Same	Same

Appendix F-16

Provision	Regulation	Note dates on or after July 1, 1993			Note dates before July 1, 1993		
		Documentation	Limit	Campus Partners process	Documentation	Limit	Campus Partners process
			10-year term				
Extend Repayment Period Hardship: prolonged illness or unemployment	§674.33(c)(1)	<ul style="list-style-type: none"> • Affidavit from doctor (or other proof of medical condition) or • Proof of receiving unemployment benefits 	<ul style="list-style-type: none"> • Unlimited • Extends the repayment term 	<ul style="list-style-type: none"> • Temporary special billing for reduced amount or • Extend term and reschedule for lower payment amount 	Same	Same	Same
Extend Repayment Period Low Income	§674.33(c)(2)	<ul style="list-style-type: none"> • Proof of annual income and number of dependents (e.g., tax return) • Income Protection Allowance Chart published annually in Federal Register 	<ul style="list-style-type: none"> • Up to 10 additional years • Only for period borrower meets eligibility criteria • Review borrower's status annually 	<ul style="list-style-type: none"> • Temporary special billing for reduced amount or • Extend term and reschedule for lower payment amount 	Same	Same	Same
Hardship Deferment Only prolonged illness or unemployment (Effective 07/01/95)	§674.35(i) §674.36(e) §674.37(e)	N/A	N/A	N/A	Documentation satisfactory to the institution	Unlimited	Deferment type H: <ul style="list-style-type: none"> • Plan 2 = interest billing during period • Plan 3 = bill interest at end of period
Forbearance	§674.33(d)		<ul style="list-style-type: none"> • Up to 12 months at a time 	<ul style="list-style-type: none"> • Temporary cessation of payments: 	Same	Same	Same

Appendix F-17

Provision	Regulation	Note dates on or after July 1, 1993			Note dates before July 1, 1993		
		Documentation	Limit	Campus Partners process	Documentation	Limit	Campus Partners process
<ul style="list-style-type: none"> Income/debt ratio Poor health Other acceptable reasons 		<ul style="list-style-type: none"> Proof of most recent income (pay statement) and payments owed on Title IV loans (copies of recent bills) Affidavit from doctor (or other proof of medical condition) Documentation satisfactory to the institution 	<ul style="list-style-type: none"> Maximum of three years 	Deferment type M, Plan 2 or 3* <ul style="list-style-type: none"> Smaller payments: Deferment type M, Plan 0 or 1* Both options must extend the repayment period			

- * Plan 0 = bill principal and interest for a fixed total amount
 Plan 1 = bill a fixed amount of principal, interest will be added
 Plan 2 = bill interest only during the forbearance period **
 Plan 3 = bill interest only at the end of the forbearance period

** You cannot use this plan unless the borrower specifically agrees.