

**HANDBOOK 2006-2007**  
**Federal Student Aid**

**Volume 6 – Campus-Based Programs**

**U.S. Department of Education**

# 2006-2007 FSA Handbook

## Vol. 6 Managing Campus Based Programs

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*The Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) programs are called “campus-based” programs because each school is responsible for administering them on its own campus. This volume gives guidance on issues specific to the administration of the campus-based programs.*

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## FEDERAL PERKINS LOAN PROGRAM

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

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### Recent budget reconciliation legislation

Guidance implementing the recent legislation pertaining to Title IV programs in the budget reconciliation act is not contained in the 2006-2007 FSA Handbook. The Department is working on guidance which will be released as soon as possible.

## FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

The purpose of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program is to encourage schools to provide grants to exceptionally needy undergraduate students to help pay for postsecondary education. This provision is in Section 413C(c)(2) of the Higher Education Act of 1965, as amended. Giving priority to applicants with exceptional financial need, schools selecting FSEOG recipients must use the selection criteria discussed in Volume 3, chapter 5.

## FEDERAL WORK-STUDY PROGRAM (FWS)

Through the FWS Program, undergraduate and graduate students work part time to help pay for the cost of their education. Schools must use 7% of their FWS Program funds to compensate students employed in community service jobs.

## RECENT CHANGES

### *Organization Changes*

For 2006-2007, the campus-based volumes of the FSA Handbook retain the process-centric organization that was first introduced in

the 2004-2005 FSA Handbook. This includes a unification of the campus-based programs volumes of 2003-2004 and previous years.

Chapter 1 of Volume 6 covers fiscal procedures and administrative requirements such as the FISAP, allocation and transfer of funds, federal/nonfederal share, and recordkeeping.

Chapter 2 discusses the operation of FWS programs, including community service jobs, Job Location and Development programs, and Work Colleges.

Chapter 3 covers making Perkins loans, in particular disclosures to students, the new Master Promissory Note, and a Q&A section on the Master Promissory Note.

Chapter 4 discusses what happens after a Perkins loan is made. Repayment, forbearance, deferment, and cancellation are covered in detail.

Chapter 5 covers procedures for Perkins loan collection and default.

For more information about where to find campus-based sections, see the introductory text at the beginning of each chapter of this volume.

### *Guidance Changes/Updates*

- p. 6-4 Added reallocation guidance and added DCL cite on same
  
- p. 6-14 Updated DCL cite on meeting nonfederal share with state grant and scholarships
  
- p. 6-91 Updated Child or Family Services cancellation guidance and added DCL cite to Child or Family Services sidebar (GEN 05-15) and added HEA cite
  
- p. 6-94 Updated Perkins cancellation reimbursement DCL cite
  
- p. 6-117 Updated DRAP participation procedure guidance, and added Campus-Based call center telephone # to sidebar (they take DRAP calls)
  
- p. 6-118 Added Perkins Cohort Default Rate Guide link
  
- p. 6-118 Revised sidebar heading “In default” to “Loans included in cohort default rate”

# Participation, Fiscal Procedures & Records

*This chapter addresses fiscal procedures and recordkeeping requirements that are specific to the Campus-Based programs. For information on general fiscal procedures and records requirements for all Federal Student Aid programs, refer to Volume 2, School Eligibility and Operations, and the current edition of the Blue Book.*

A school applies for and receives program funds directly from the U.S. Department of Education by submitting an application, the Fiscal Operations Report and Application to Participate (FISAP), each award year. The school's financial aid administrator is responsible for ensuring that eligible students at the school receive program funds according to the provisions of the law, the regulations, the Program Participation Agreement (PPA) signed by both a representative of the Secretary of Education and the school's chief administrative officer, and other criteria the Department may establish.

## PROGRAM PARTICIPATION AGREEMENT

A school that wants to participate in any Federal Student Aid (FSA) program must sign a PPA with the Department. The school official legally authorized to assume the agreement's obligations on the school's behalf must sign the agreement. (For more information on this agreement, see *Volume 2, School Eligibility and Operations.*)

Under the PPA, the school agrees to use the funds it receives solely for the purposes specified in the regulations for that program and to administer each program in accordance with the Higher Education Act of 1965, as amended (HEA), and the General Provisions regulations. See Volume 2 for General Provisions requirements that apply to all of the FSA programs. The Federal Perkins Loan and FWS programs have additional requirements that are part of the PPA and that are specific to the individual program.

### Perkins PPA Requirements

The agreement requires the school to annually submit to the Department a report containing information that determines the school's cohort default rate.

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

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### Program Participation Agreement

34 CFR 675.8

### FISAP application

34 CFR 673.3

### Perkins PPA

34 CFR 674.8

- the Federal Capital Contribution (FCC) the school receives as its federal allocation for the program for each award year (explained later in this chapter);
- the school's matching share—the institution's capital contribution (ICC), discussed on the next page;
- payments the school receives for repayment of loan principal, interest, collection charges, and penalty or late charges on loans from the fund;
- payments the school receives from the federal government for cancellations (such as teacher cancellations) of Perkins Loans and National Direct Student Loans (see Chapter 4 of this volume);
- any other earnings on fund assets, including net interest earnings on funds deposited in an interest-bearing account (total interest minus bank charges incurred on the account); and
- proceeds of any short-term no-interest loans the school makes to the fund in anticipation of receipt of its FCC or of loan collections.

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#### Federal Work-Study PPA

34 CFR 675.8

#### *Federal Work-Study PPA Requirements*

Under the Program Participation Agreement, schools participating in the Federal Work-Study (FWS) Program must:

- make FWS employment reasonably available, to the extent of available funds, to all eligible students;
- award FWS employment, to the maximum extent practicable, that will complement and reinforce each recipient's educational program or career goals;
- assure that FWS employment may be used to support programs for supportive services to students with disabilities; and
- inform all eligible students of the opportunity to perform community services and consult with local nonprofit, government, and community-based organizations to identify those opportunities.

#### FISAP

#### *APPLICATION FOR FUNDS*

To apply for and receive funds from the Department for one or more of the Campus-Based programs, a school must submit a FISAP for each award year. By the 1st of August each year, the Department makes available the next FISAP, which is due no later than the 1st of

October of the same year. If October 1st falls on a weekend, the deadline is moved back to the previous business day. The Department posts instructions for submitting the FISAP in a Dear Partner Letter at [<http://www.ifap.ed.gov>]. (See box FISAP on the Web, below) The information reported on the FISAP must be accurate and verifiable.

A school that has applied to participate in the Campus-Based programs for the first time should submit a FISAP by the deadline even if the school has not been certified to participate in the programs. The Department will calculate a funding level for the school and put the funding on “hold” status until the school has been approved to participate. See “Allocation of Funds” for more information.

### **FISAP ON THE WEB**

Schools must submit the FISAP through the FISAP on the Web, available at [<http://www.cbfnisap.ed.gov>]. A list of all Campus-Based submission deadlines can also be found there.

Schools may also make corrections to the 2004-2005 Fiscal Operations Report and 2006-2007 Application to Participate via the FISAP on the Web site.

For assistance submitting corrections for years prior to the 2001-2002 Fiscal Operations Report and 2003-2004 Application to Participate or for questions concerning the preparation of the FISAP, schools should contact the Campus-Based Call Center at 1-877-801-7168 or CBF0B@ED.GOV. Questions about prior-year data listed on a FISAP should be referred to a FISAP administrator at the Campus-Based Call Center.

## **ALLOCATION OF FUNDS**

The Department allocates funds for the Campus-Based programs directly to schools each award year. The allocation (or authorization) for each program is the amount of funding the school is authorized to receive from the Department for an award year. The Department bases the allocation amount on statutory formulas and on the amount of funds appropriated by Congress for the program. A school will not, however, receive an allocation that is in excess of its request. Your school’s initial Perkins allocation (FCC) is based on the amount allocated for the base award year, 1999-2000.

### ***Allocation Schedule***

If your school submits the FISAP by the 1st of October, the Department provides your school with tentative allocation information in January of the following year and with final allocation information by the 1st of April. The Department posts notification of the

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#### **Allocation of funds**

HEA 462(a)  
34 CFR 673.4

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#### **Campus-Based Programs allocation formula**

Dear Partner Letters CB-99-16 and CB-03-02  
HEA Sections 413D, 442, and 462



availability and calculation methodology used for final award figures in a Dear Partner Letter at [<http://www.ifap.ed.gov>]. Schools obtain their specific award amounts by visiting the Self Service section of the FISAP on the Web site.

Sometimes, the Department calculates a school's final allocations, but does not issue the final allocation by April 1st. We may withhold a school's final allocation if:

- the school lost its eligibility to participate in FSA programs;
- the school is a new applicant for the FSA programs and/or for Campus-Based programs and hasn't been approved yet; or
- we have not received the FISAP signature/certification form with the required original signature of the school's CEO.

When the reason(s) for holding the school's final allocation is/are resolved, we will release the school's final allocation.

If a school does not use its total allocation of funds for the Campus-Based programs, the school must release unexpended amounts to the Department. In June/July, the Department posts a Dear Partner Letter at [<http://www.ifap.ed.gov>] that requests schools to release any previous award year funds that they have not expended and offers schools the opportunity to request supplemental FWS funds for community service. The Reallocation Form for schools wishing to return funds or request supplemental FWS funds can be found in the Setup section of the FISAP on the Web site.

### *Reallocation*

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#### Reallocation DCL

CB-05-10

You must complete the Campus-Based Reallocation form, available online at the eCampus-Based website ([www.cbfsap.ed.gov](http://www.cbfsap.ed.gov)) if you have the following situation at your school: If you do not intend to spend your entire 2005-2006 allocation in any of the Campus-Based programs, or if you want to request supplemental 2006-2007 FWS funds to pay students in community service jobs **and** your school has:

a) spent at least 5 percent of its total 2005-2006 FWS funds to compensate students employed as reading tutors of children or in family literacy activities as part of its community service activities; **and**

b) has an FWS fair share shortfall as shown on line 28 of the school's 2006-2007 final funding worksheet, provided with your final allocation letter.

Without the information provided on the Campus-Based Reallocation Form, we would not be able to reallocate unexpended 2005-2006 campus-based funds as supplemental 2006-2007 allocations. For additional information, contact the Campus-Based Call Center at (877) 801-7168.

## Releasing Unused Funds

If a school returns more than 10% of its allocated funds for a given award year under any one of the Campus-Based programs, the Department will reduce the school's allocation for the second succeeding award year by the dollar amount returned unless the Department waives this provision. For example, if the school returns more than 10% of its 2004-2005 allocation, its 2006-2007 allocation will be reduced by the dollar amount returned for 2004-2005.

The Department may waive this provision for a specific school if it finds that enforcement would be contrary to the interests of the program. The Department considers enforcement to be contrary to the interest of the program only if the school returned more than 10% of its allocation due to circumstances that are beyond the school's control and are not expected to recur.

After schools release their unexpended allocations, the Department reallocates the funds to schools that have met the criteria for receiving a supplemental allocation. Criteria for distributing these funds for each program are established in accordance with the Higher Education Act and the Campus-Based program regulations.

For Perkins loans, if you return unexpended funds, the Department reallocates 80% of the returned funds in accordance with 462(i) of the HEA and reallocates 20% in a manner that best carries out the purposes of the Federal Perkins Loan Program. Unexpended FSEOG funds returned to the Department will be reallocated to an eligible school in a manner that best carries out the purposes of the FSEOG program.

Unexpended FWS funds returned to the Department will be reallocated to an eligible school that used at least 5% of its total FWS allocation to pay students employed as reading tutors of children or performing family literacy activities in family literacy projects in the preceding award year. A school must request the reallocated FWS funds and the school must have a fair-share shortfall to receive these funds. A school must use all the reallocated funds only to pay students employed in community service jobs.

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### Reduction of Allocation

34 CFR 673.4(d)(3)

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### Requesting Waiver of Allocation Reduction

To request a waiver, a school must submit an explanation of the circumstances with its FISAP. The Department explains the process a school must use to request a waiver for the 2006-2007 award year in the FISAP Instruction Booklet.

## *Fiscal Operations Report*

The school uses the Fiscal Operations Report portion of the FISAP to report its expenditures under the Campus-Based programs in the previous award year. (See box FISAP on the Web)

The Department provides materials essential for the preparation and submission of the FISAP in a Dear Partner Letter posted in July each year at [<http://www.ifap.ed.gov>].

## TRANSFER OF CAMPUS-BASED FUNDS

### *Perkins Transfer*

Your school may transfer up to a total of 25% of its total Federal Perkins Loan allocation (initial plus supplemental) for an award year to either or both the Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS) programs. The Department's permission is not required.

If your school is a work-college, your school may transfer up to the total Federal Perkins Loan allocation (initial plus supplemental) for an award year to the Work-Colleges Program (see Chapter 2 of this volume for details on the Work-Colleges Program).

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

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

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

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

### *Federal Work-Study Transfer*

Your school may transfer up to 25% of its total FWS allocation (initial and supplemental) to the FSEOG Program. The Department's permission is not required. (Your school's total FWS allocation does not include funds carried forward or carried back from other award years. See chart on next page.)

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

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### Transfer of Perkins funds

34 CFR 674.18(b)

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### Work-Colleges funds

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

### **GAPS: Transferred Perkins Funds**

Any Perkins funds transferred to FSEOG or FWS must be entered in GAPS as an expenditure against the Perkins program, not the program into which the funds were transferred and used.

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### Future allocations not affected by transfer

A school's future allocations for all programs are not affected by past transferring of funds between programs.

You must award transferred FWS funds according to the requirements of the FSEOG Program.

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

A school that transfers FWS funds to the FSEOG Program must transfer any unexpended funds **back** to the FWS Program at the end of the award year.

**Transfer of FWS funds to FSEOG cite**

34 CFR 675.18(e)

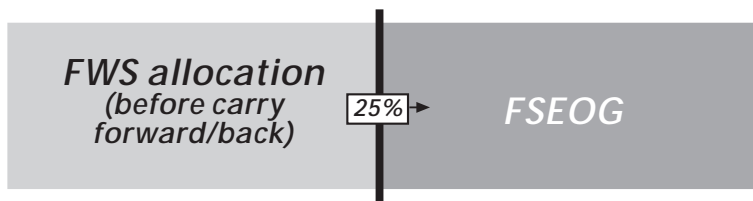
**GAPS: Transferred FWS Funds**

Any FWS funds transferred to FSEOG must be entered in GAPS as an expenditure against the FWS Program, not the FSEOG Program.

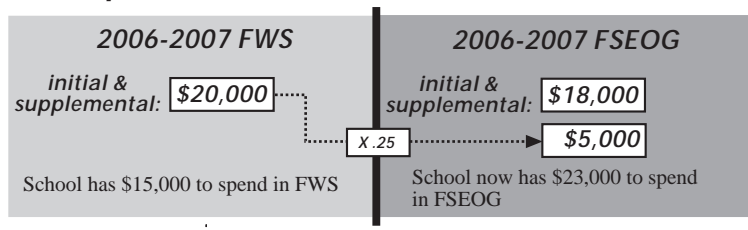
**FSEOG Transfer Prohibited**

The HEA prohibits the transfer of FSEOG funds to any other program. However, a school may transfer FWS and Perkins funds to the FSEOG program as covered under the headings Perkins Transfer and Federal Work-Study Transfer above.

**Transfer from FWS to FSEOG**



**Example**



### **GAPS: Funds Carried Forward/Back**

Any FWS funds carried forward or carried back between award years must be entered in GAPS as an expenditure against the FWS authorization for the award year from which the funds were taken, **not** the authorization for the award year in which the funds were used. The same requirement holds for FSEOG funds.

### **FWS carry forward/carry back**

34 CFR 675.18(b)

34 CFR 675.18(c)

## **FSEOG AND FWS CARRY FORWARD/CARRY BACK**

Your school may spend up to 10% of its current year's FWS or FSEOG allocation (initial and supplemental) in the **following** award year (carry forward). Before a school may spend its current year's allocation, it must spend any funds carried forward from the previous year.

Your school is also permitted to spend up to 10% of its current year's FWS or FSEOG allocation (initial and supplemental) for expenses incurred in the **previous** award year (carry back).

Your school must match FWS or FSEOG funds carried forward or carried back in the award year that they are spent. A school's future FWS or FSEOG program allocation is not affected by carrying forward or carrying back funds between award years.

You may "carry back" FWS funds for summer employment; that is, you may use any portion of your school's initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 1 of the previous award year but prior to the beginning of the current award year (July 1). This summer carry back authority is in addition to the authority to carry back 10% of the current year's FWS allocation for use during the previous award year.

Also, your school may spend any portion of its current award year's initial and supplemental FSEOG allocations to make FSEOG awards to students for payment periods that begin on or after May 1st of the prior award year but end prior to the start of the current award year (carry back for summer). This carry back authority for summer FSEOG awards is in addition to the authority to carry back 10% of the current award year's FSEOG allocation for use during the previous award year.

On the FISAP, you must report FWS or FSEOG funds that your school carries back and carries forward. For example, if a school carried forward 10% of its FWS 2005-2006 allocation to be spent in 2006-2007, the school must report this amount on the FISAP that is due no later than September 29th, 2006, in Part V of the Fiscal Operations Report for 2005-2006.

The official allocation letter for a specific award period is the school's authority to exercise these options. A school may not carry forward or carry back FWS funds to any award year in which there is no specific FWS allocation and the same requirement holds for FSEOG funds.

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## 10 % Carry Back/Carry Forward for FWS and FSEOG

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The same flexibility is available for FSEOG Funds

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### *FWS Limitations on Use of Funds Carried Forward or Back*

Schools are not permitted to add funds that are carried forward or back to the total FWS allocation for an award year when determining the maximum percentage of available funds that may be used in that award year for any of the following purposes (see next page):

- the transferring of FWS funds to FSEOG;
- providing the federal share of wages in private for-profit sector jobs; or
- the Job Location and Development (JLD) Program.

For example, for the 2006-2007 award year, a school may not add to the 2006-2007 total FWS allocation any FWS funds carried forward from 2005-2006 or carried back from 2007-2008 when determining the maximum percentage of available funds that may be used in 2006-2007 for the purposes listed above. The maximum amount usable for each of the three purposes listed in the previous paragraph is the appropriate percentage of a school's total 2006-2007 original FWS allocation plus any supplemental 2006-2007 FWS allocation.

## FEDERAL SHARE LIMITATION

### *Federal Work-Study Federal Share*

The federal share of FWS wages paid to a student may not exceed 75%, with the following exceptions:

- The federal share of FWS wages paid to a student working for a **private for-profit** organization may not exceed 50%; and
- The FWS regulations authorize a 100% federal share of FWS wages paid to a student who is
  - employed as a reading tutor for preschool-age children or elementary school children

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### **Wages from federal agency**

The portion of the FWS wages contributed as the institutional share by a federal off-campus agency is not considered part of the "federal share." Thus, a federal agency may provide the required share of student compensation normally paid by off-campus agencies plus any other employer costs that they agree to pay.

**Federal shares cites**

**Federal share limitation**

34 CFR 675.26(a)(1)

**Private for-profit organizations**

34 CFR 675.26(a)(3)

**Reading tutor and family literacy projects**

34 CFR 675.26(d)

**Strengthening institutions**

34 CFR 675.26(d)

**90% federal share**

34 CFR 675.26(a)(2)

**Restrictions cite**

34 CFR 675.26(b)

**JLD cite**

34 CFR 675.33(b)

<b>Part 606 ▶</b>
Developing Hispanic-Serving Institutions Program
<b>Part 607 ▶</b>
Strengthening Institutions Program
American Indian Tribally Controlled Colleges and Universities Program
Alaska Native and Native Hawaiian-Serving Institutions Program
<b>Part 608 ▶</b>
Strengthening Historically Black Colleges and Universities Program
<b>Part 609 ▶</b>
Strengthening Historically Black Graduate Institutions Program

- employed as a mathematics tutor for children in elementary school through ninth grade, or
- performing family literacy activities in a family literacy project that provides services to families with preschool age children or elementary school children.

The work performed by the student must be for the school itself, for a federal, state, or local public agency, or for a private nonprofit organization. A school is not required to ask the Department for a waiver of the FWS nonfederal share requirement to receive the 100% federal share authorization for an FWS student employed in one of these jobs. Instead, the school should use 100% federal dollars to pay such a student and then show on its FISAP that it did so. A discussion of employing FWS students as tutors and in family literacy projects is in Chapter 2 of this volume.

- The Department may authorize a federal share of 100% of FWS wages at schools designated as eligible schools under 34 CFR parts 606, 607, 608, or 609 (see sidebar). The work performed by the student must be for the school itself, for a federal, state, or local public agency, or for a private nonprofit organization. Your school is considered to have applied for a waiver of the nonfederal share requirement if your school is designated as an eligible school and your school submits a complete FISAP by the established deadline. Such schools will receive a letter from the Department indicating that they have been granted a waiver of the FWS nonfederal share requirement. (For more information, see *The Blue Book* on IFAP)

If your school files a FISAP on behalf of two or more separately eligible school locations, but not all of these locations are eligible for a waiver of the nonfederal share requirement, you must file a separate FISAP for any locations that are not eligible for a waiver of the nonfederal share requirement. Only those locations that are eligible will receive a waiver of the nonfederal share requirement.

- The FWS regulations authorize a school to pay a federal share of FWS wages to a student in excess of the current 75% limit but not exceeding 90% under the following specific conditions:
  - The student is employed at a private nonprofit organization or a federal, state, or local public agency. (Employment at the school itself is not eligible.)
  - The school does not own, operate, or control the organization or agency. To satisfy this requirement, your school must keep a statement in the school's file, signed by both the agency and the school, stating that they have no such relationship.

- The school selects the organization or agency on an individual, case-by-case basis. This requirement is satisfied when the school selects the agency through its normal process of selecting potential employers.
- The organization or agency must be unable to pay the regular nonfederal share. To satisfy this requirement, the school must keep in its file a signed letter from an official of the agency stating that the agency cannot afford to pay the regular nonfederal share.
- The 90% federal share is limited to no more than 10% of the students paid under the FWS Program. For purposes of this calculation, the school must use the total number of FWS students paid during the current award year. The 10% limit on the number of students paid with the 90% federal share does not include students whose FWS wages have been exempted from the full nonfederal share requirement due to being employed as a reading tutor, mathematics tutor, or performing family literacy activities.

The federal share of FWS wages paid to a student may be lower than 75% if the employer chooses to contribute more than the minimum required nonfederal share. For example, if a school has a large demand for FWS jobs from its various departments, it may contribute more than the usual 25% to allow for additional employment.

The federal share may **not** be used to provide fringe benefits such as sick leave, vacation pay, or holiday pay, or employer's contributions to Social Security, workers' compensation, retirement, or any other welfare or insurance program. These restrictions on the federal share apply even when the Department authorizes a federal share of 100% of FWS wages.

The federal share of allowable costs in carrying out the JLD Program may not exceed 80% of such costs. (See Chapter 2 of this volume.)

### *Perkins Federal Share*

The federal funds allocated to a school in an award year under the Federal Perkins Loan Program are called the Federal Capital Contribution (FCC). The FCC funds to be used for the Federal Perkins Loan Program must be deposited into the school's Perkins revolving fund. The FCC deposited into the school's Perkins revolving fund must not exceed 75% of the combined FCC and required nonfederal share. Unlike the FWS and FSEOG programs, the Department is not able to authorize a federal share of 100% for the FCC deposited into the school's Perkins revolving fund. It should be noted that when a school transfers new FCC to either the



FWS or FSEOG programs, the FCC is not deposited into its Perkins revolving fund.

### **FSEOG Federal Share**

The federal share of FSEOGs made by a school may not exceed 75% of the total FSEOGs. The school must contribute a nonfederal share (also called “institutional share”) of 25%. However, the Department may waive the nonfederal share requirement and may authorize for an award year a federal share of 100% to a school that is designated as an eligible school under 34 CFR parts 606, 607, or 608 (see chart p. 6-10). Your school is considered to have applied for a waiver of the nonfederal share requirement if your school is designated as an eligible school and your school submits a complete FISAP by the established deadline. Such schools will receive a letter from the Department indicating that they have been granted a waiver of the nonfederal share requirement. (For more information, see *The Blue Book*, available on IFAP)

## **NONFEDERAL SHARE**

### **Federal Work-Study Nonfederal Share**

The nonfederal share of a student’s FWS wages must be at least 25% each award year, except in the cases listed above. (See previous section.)

Your school may use any resource available to pay its share of FWS compensation except federal funds allocated under the FWS Program (or any other program funds where this use is prohibited). The school’s share may come from its own funds, from outside funds (such as from an off-campus agency), or from both. However, if a student is employed by a private, for-profit organization, that organization must provide the nonfederal share.

Your school may also pay the institutional share with noncash contributions. If the school’s noncash contribution is less than the remaining 25%, the school must make up the difference in cash.

If the Department grants an institutional share waiver to a school that is designated as an eligible school under 34 CFR parts 606, 607, 608, or 609 (see chart on p. 6-10), that school has the **option** of providing an institutional share and determining the amount of the share. However, the institutional share requirements for employment provided by a private for-profit organization (50% federal-share limitation) or for the administration of the JLD Program (80% federal-share limitation) are never waived.

If a school receives more money under an employment agreement with an off-campus agency than the sum of (1) required employer costs, (2) the school’s nonfederal share, and (3) any share of administrative costs the employer agreed to pay, the school must handle the excess in one of three ways:

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#### **Nonfederal share**

34 CFR 675.27

- use it to reduce the federal share on a dollar-for-dollar basis;
- hold it in trust for off-campus employment during the next award year; or
- refund it to the off-campus employer.

Funds from programs sponsored by federal agencies (such as the National Science Foundation or the National Institutes of Health) may be used to pay the nonfederal share, as long as the programs have the authority to pay student wages. A school should contact the appropriate federal agency to see if the program in question does have this authority.

### *Perkins Nonfederal Share*

The nonfederal share required from the school's own funds for the Federal Perkins Loan Program is called the Institutional Capital Contribution (ICC). A school must deposit its ICC into the school's Perkins revolving fund either prior to or at the same time it deposits any FCC. Unlike the FWS and FSEOG programs, the Department is not able to grant a waiver of the ICC.

The required ICC must equal or exceed:

- One-third (33 1/3%) of the FCC, or
- One-quarter (25%) of the combined FCC and ICC.

For example, if a school receives and deposits into its Perkins revolving fund an FCC of \$3,000, it would be required to provide an ICC of at least \$1,000, for a combined amount of \$4,000. The FCC (\$3,000) times .3333 equals \$1,000. The combined FCC and ICC (\$4,000) times .25 equals \$1,000.

It should be noted that when a school transfers new FCC funds to either the FWS or FSEOG programs, the FCC is not deposited into its Perkins revolving fund and the school does not have to provide an ICC share. Instead, the school must provide a nonfederal share for those FCC funds at the level required by the program that it was transferred to and spent in by the school.

### *FSEOG Nonfederal Share*

The nonfederal share of FSEOGs must be made from the school's own resources. These resources may include:

- institutional scholarships and grants;
- waivers of tuition or fees;
- state scholarships and grants; and
- funds from foundations or other charitable organizations.

The Department has determined that all state scholarships and grants, except for the Leveraging Educational Assistance Partnership (LEAP) and the Special Leveraging Educational Assistance Partnership (SLEAP) programs are eligible funds that may be used to meet

the nonfederal share requirement of FSEOGs. LEAP and SLEAP grants, for this purpose, are defined as the federal LEAP and SLEAP allocation plus the minimum required state matching amount. The remaining state grants are not considered LEAP or SLEAP grants, and therefore can be used for the match.

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### Use of state scholarships and grants as the non-federal share of FSEOG

Dear Colleague Letter CB-06-03

Dear Partner Letter CB-05-03, issued February 2005, provided a chart showing what percentage of each state's scholarships could be used to provide the nonfederal share of FSEOGs for the 2004-2005 award year. The Department computed the percentages in the chart on the basis of information furnished by the respective states regarding expected expenditures for state scholarships and grants for the 2004-2005 award year, and by using the 2004-2005 LEAP and SLEAP allocation data and required matching information. Each school can apply the appropriate state percentage to the state scholarships and grants its students receive to determine the total amount of state scholarships and grants that may be used to meet the FSEOG nonfederal share requirement.

As a variance from use of the percentages indicated in the chart, if a school has specific knowledge that a state scholarship or grant—irrespective of its name—is considered to be the required state matching portion of a LEAP or SLEAP grant, that scholarship or grant may not be used to meet the FSEOG nonfederal share. Also, if a school has documented knowledge that a state scholarship or grant is not comprised of LEAP or SLEAP monies (federal or state), 100% of the scholarship or grant may be used as the FSEOG nonfederal share.

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### State scholarship as nonfederal share component example

Dominic receives a grant of \$675 from a state with a percentage of 96.26. Jacob Broadcasting School multiplies 96.26% by \$675, resulting in \$650, which is the portion of the grant that may be used to meet the nonfederal share requirement for a \$2,600 FSEOG award (\$1,950 is the federal share of the FSEOG award).

The nonfederal share requirement of 25% (unless the school qualifies for a waiver) may be met by one of three methods. In the following discussion of these methods, you should note that for a student to meet the definition of an FSEOG recipient, some portion of the grant awarded the student must have come from the FSEOG federal dollars. Also, by the time the FSEOGs are disbursed (regardless of when in the award period the disbursements are made), the required match must have been accomplished; that is, the school's own resources must have been disbursed before or at the time the federal dollars are disbursed. However, it is important to note that outside resources (such as state grants, foundation, or other charitable organization funds) can be used to match FSEOGs even if the funds are received at a later date, provided that the school has written information about funds that the noninstitutional agency or organization is awarding to the student involved. The written information must be kept on file at the school.

The three methods a school may use to meet its nonfederal share follow:

1. Individual FSEOG recipient basis—the school provides its share to an individual FSEOG recipient together with the federal share; that is, each student's total FSEOG would

consist of 25% nonfederal resources and 75% federal dollars for the 2006-2007 award year.

2. **Aggregate basis**—the school ensures that the sum of all funds awarded to FSEOG recipients in the 2006-2007 award year comprises 75% FSEOG federal funds and 25% nonfederal resources. For example, if a school awards a total of \$60,000 to FSEOG recipients in 2006-2007, it has to ensure that \$45,000 comes from FSEOG federal funds and \$15,000 comes from nonfederal resources; if there are 100 FSEOG recipients, the entire \$15,000 nonfederal resource requirement can be met by awarding a total of \$15,000 in nonfederal resources to four FSEOG recipients. However, each FSEOG recipient must receive some FSEOG federal funds.
3. **Fund-specific basis**—the school establishes an FSEOG fund into which it deposits FSEOG federal funds and the required 25% nonfederal share. Awards to FSEOG recipients then are made from the fund.

## USE OF FWS ALLOCATED FUNDS

An approved school may use part of its FWS allocation for the purpose of meeting the costs of the Work-Colleges Program discussed in Chapter 2.

Your school may use up to 25% of its FWS allocation and reallocation for an award year to pay the wages of FWS students employed by private for-profit organizations.

### *Community Service Jobs*

There are two community service expenditure requirements that a school must meet. First, a school must use at least 7% of its FWS federal allocation for an award year to pay the federal share of wages to students employed in community service jobs for that year. Second, in meeting this 7% community service requirement, one or more of the school's FWS students must be employed as a reading tutor for children in a reading tutoring project or performing family literacy activities in a family literacy project.

A school may request a waiver of either or both of these requirements by providing in writing detailed information to support its waiver request. The waiver request must be received by the deadline that is published annually in the Federal Register. The Department will approve a waiver only if it determines that the school has demonstrated that enforcing the requirements would cause a hardship for students at the school. The fact that it may be difficult for the school to comply with these requirements is not, in and of itself, a basis for granting a waiver.

The Department issues a letter annually on the FWS community service waiver process and deadline. To request a waiver for the 2006-

### Allocation

The term **allocation** always refers to the *original* initial and supplemental allocation your school receives and never refers to an amount remaining after your school carries forward or carries back funds.

### 7% Citation

34 CFR 675.18(g)

### Waiver request statement

Dear Partner Letter CB-05-05, dated April 2005

2007 award year, a school must submit its waiver request and any supporting information to the Department by April 28, 2006. The waiver request must be signed by an appropriate school official, and above the signature the official must include this statement: "I certify that the information I provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by the U.S. Department of Education." If a school official has any questions regarding the FWS community service expenditure requirements or waiver procedures, he or she may contact FSA's Campus-Based Call Center at 1-877-801-7168.

The Department has not specified the circumstances that would allow a school to receive a waiver of the community service requirements in order to allow flexibility for consideration of all

## **COMMUNITY SERVICE APPROVED WAIVER EXAMPLES**

### **Case Study #1 - Small FWS allocation**

The school had a very small FWS allocation. The supporting information submitted by the school noted that 7% of the school's allocation only provided enough funds for a student to work for a short period of time. Therefore, the school was unable to find placement for a student in community service.

### **Case Study #2 - Rural area**

The school was in a rural area that was located far away from the types of organizations that would normally provide community service jobs. The school provided information that showed that its students lacked the means of transportation to get to the town where the community service jobs were located. In a similar waiver request in which transportation did exist, a school provided documentation that showed that the transportation costs were extremely high for the students.

### **Case Study #3 - Specialized program**

The school offered only a single program of specialized study that required its students to participate in extensive curriculum and classroom workloads. The school provided information that demonstrated that this specialized educational program prevented the students from performing community service jobs at the time those work opportunities were available.

*These examples are not the only circumstances that may result in approval of a waiver request, however, you must always submit a justification of your request.*

factors that may be valid reasons for a waiver. The Department in the past has approved a limited number of waivers of the community service expenditure requirements for schools that have demonstrated that enforcing these requirements would have caused a hardship for their students. (See examples of waiver requests approved by the Department in the above box.) These examples are not the only circumstances that may result in approval of a waiver request.

FWS community service expenditures for the 2005-2006 award year are reported on the FISAP that is due no later than September 29, 2006. When a school receives reallocated FWS funds, the minimum amount of FWS federal funds the school must expend on community service jobs is the greater of: 7% of its total FWS federal allocation for an award year; or 100% of the amount of its reallocated FWS federal funds.

## CAMPUS-BASED RECORDKEEPING

A school must follow the recordkeeping requirements in the General Provisions (discussed in *Volume 2*), and those specific to the Campus-Based programs.

A school must keep financial records that reflect all Campus-Based program transactions and must keep all records supporting the school's application for Campus-Based funds. This documentation includes the applications and records of all students who applied for Campus-Based assistance for a specific award year and were included on the school's FISAP for that award year. The school must also retain applications and records of students who applied for, but did not receive aid, either because the school had no more funds to award or because the school determined that the student did not need funds. The school must keep general ledger control accounts and related accounts that identify each program transaction and must separate those transactions from all other institutional financial activity. Fiscal records must be reconciled at least monthly.

The Campus-Based records a school must maintain include but are not limited to:

- the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine a student's eligibility for Campus-Based program funds;
- application data submitted to the Department or the school on behalf of the student;
- documentation of the payment of any return of Title IV funds or overpayment to the FSA program fund or the Department;
- documentation of the amount of a Perkins Loan, FSEOG or FWS award, its payment period, and the calculations used to determine the amount of the loan, grant, or FWS award;

- documentation of each FSEOG or Perkins Loan disbursement and the date and amount of each payment of FWS wages;
- documentation of the school’s calculation of any refunds or overpayments due to, or on behalf of, the student and the amount, date, and basis of the school’s calculation;
- information collected at initial and exit loan counseling required by Perkins Loan regulations; and
- reports and forms used by the school in its participation in a Campus-Based program, and any records needed to verify data that appear in those reports and forms.

### *Perkins Recordkeeping*

Perkins Loan records a school must maintain include, but are not limited to:

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#### **Record retention cites**

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##### **FISAP**

34 CFR 668.24(e)(1)(i)

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##### **Perkins loans**

34 CFR 674.19(e)

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##### **Records under question**

34 CFR 668.24(e)(3)

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

For each Perkins Loan borrower, a school must also maintain a repayment history that shows:

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

When the borrower has fully repaid the Perkins Loan, your school is required to either mark the original note “paid in full,” have it

certified by an official of the school, and return it to the borrower or to notify the borrower in writing that the loan is paid in full. The school must keep a copy of the note for at least three years after the date the loan was paid in full.

The school must keep the original signed promissory note and repayment schedule in a locked, fireproof container until the loan is repaid in full or until the original note and schedule are needed to enforce loan collection. Only authorized personnel may have access to these records. If a promissory note was signed electronically, you must store it electronically and ensure that it can be retrieved in a coherent format.

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

The following is a sample certification statement that you may adopt:

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## Certification Statement

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ "

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The Department recommends that the school maintain a certified copy of the signed promissory note as well as a record of the full amount owed in its records beyond the three-year record retention requirement.

### ***FWS Recordkeeping***

For schools administering FWS, you must also follow the procedures established in 34 CFR 675.19 for documenting a student's FWS work, earnings, and payroll transactions. You must establish and maintain an internal control system of checks and balances that ensures that no office can both authorize FWS payments and disburse FWS funds to students. If you use a fiscal agent for FWS funds, that agent may perform only ministerial acts.

### ***Payroll records***

In school records, schools must distinguish expenditures for FWS compensation from other institutional expenditures. You should enter

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### **FWS Recordkeeping**

34 CFR 675.19(b)

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### **Fiscal procedures and records**

34 CFR 676.19(b)



FWS compensation on a separate voucher or, if listed on the general payroll voucher, you should group FWS compensation separately from other compensation. If payrolls are handled on automatic data processing equipment, you should identify FWS with a special code.

You must establish and maintain program and fiscal records that are reconciled at least monthly. The records must include:

- a payroll voucher containing sufficient information to support all payroll disbursements;
- a noncash contribution record to document any payment of the school's share of the student's earnings in the form of services and equipment; and
- a certification by the student's supervisor, an official of the school (or off-campus agency) that each student has worked and earned the amount being paid. Your school may use an electronic certification process described below. The school may still continue to have the FWS student's supervisor sign a paper certification. If the students are paid on an hourly basis, the certification must include or be supported by a time record showing the hours each student worked in clock time sequence, or the total hours worked per day.

#### ***Electronic certification***

As noted above, a school may use an electronic certification by an FWS student's supervisor that the student has worked and earned the amount being paid. This electronic certification enables a school to implement an electronic payroll system for its FWS students.

A school that uses an electronic certification must adopt reasonable safeguards against possible fraud and abuse. The school should provide a secure electronic certification through an electronic payroll system that includes:

- password protection;
- password changes at set intervals;
- access revocation for unsuccessful log-ins;
- user identification and entry-point tracking;
- random audit surveys with supervisors; and
- security tests of the code access.

#### ***Payroll vouchers***

Payroll vouchers must support all payroll disbursements and should provide space for the following information:

- the school's name and address;
- the starting and ending dates of the payroll period;
- the student's name;

- an identification of the student's job;
- the number of hours worked during the pay period;
- the hourly rate of pay for an undergraduate student;
- the hourly rate of pay or salary for a graduate student;
- the student's gross earnings;
- any compensation withheld for federal, state, county, or city taxes, and other deductions;
- any noncash payments;
- the student's net earnings;
- a check number, duplicate receipt, or other payment identification; and
- any overtime earnings (a student may be paid overtime with FWS funds).

### ***Job descriptions***

Each FWS position should have a job description that includes the following:

- the name and address of the student's employer (department, public agency, nonprofit organization);
- the purpose of the student's job;
- the student's duties and responsibilities;
- the job qualifications;
- the job's wage rate or range;
- the length of the student's employment (beginning and ending dates); and
- the name of the student's supervisor.

The job description has several purposes:

- It clearly defines whether the job qualifies under the FWS Program.
- It provides the information needed to explain the position to a student and to help him or her select the type of employment most closely related to his or her educational or career objectives.
- It helps the financial aid administrator, the student, and the supervisor determine the number of hours of work required at the specified wage rate to meet a student's financial need.
- It establishes a written record, for both student and employer, of the job's duties and responsibilities so that there will be no misunderstanding.

If a student is employed with an agency or organization that provides community services, the school should, as with any other FWS position, have a job description that includes the duties and the responsibilities. Schools should use the job description to verify that the job meets the definition of community services in the FWS regulations (see Chapter 2). In addition, for students performing reading tutoring or family literacy activities, the job description should support those jobs.

### *FSEOG Recordkeeping*

In addition to following the fiscal procedures and records requirements mentioned above and in *Volume 2*, a school must meet the following requirements, which are included in the FSEOG regulations:

- A school must establish and maintain an internal control system of checks and balances that ensures that no office can both authorize FSEOG payments and disburse FSEOG funds to students.
- A school must establish and maintain program and fiscal records that are reconciled at least monthly.
- Each year a school must submit a FISAP and other information the Department requires. The information must be accurate and must be provided on the form and at the time specified by the Department.

### *Record Retention*

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

- The school must retain the FISAP containing reported expenditures and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted.
- The school must keep repayment records for Perkins Loans, including records relating to cancellation and deferment requests for at least three years from the date a loan is repaid, cancelled, or assigned to the Department. If a loan is assigned to the Department due to total and permanent disability, the school must retain any loan-related

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#### **Records readily available for review**

34 CFR 668.24(d)

documentation that it does not submit until the Department approves a final discharge or the loan has been paid in full (Dear Colleague Letter CB-02-08).

- Records questioned in an audit or program review must be kept until the questions are resolved or until the end of the retention period applicable to the records, whichever is later.

### Record Formats

A school must keep its Campus-Based program records in one of the following formats:

- Original signed promissory notes and signed repayment schedules for Perkins Loans, National Direct Student Loans, or National Defense Student Loans must be kept in a locked fireproof container until the loan is repaid or until the school needs the originals to enforce collection of the loan. If a loan is assigned to the Department, the school must send the original promissory note or a certified copy of the note, as well as a copy of the original deferment or cancellation form(s). The school may not send computer-generated form(s) or microform(s).
- A school may keep other required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, but all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Department except that (1) a student's SAR or ISIR used to determine eligibility for FSA program funds must be kept in the format in which the school received it, unless the school keeps the SAR in an imaged media format; and (2) any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be kept in its original hard copy or in an imaged media format.
- Any imaged media format used to keep 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.

## PERKINS REIMBURSEMENT & ASSIGNMENT

The Department may require your school to reimburse its Perkins Loan Fund for any outstanding balance on an overpayment or a defaulted loan for which your school failed to record or retain the promissory note, record disbursements, or exercise due diligence.

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

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### Format of records

34 CFR 674.19(e)(4)  
34 CFR 668.24(d)

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### Perkins assignment

34 CFR 674.50  
Dear Colleague Letter CB-03-12

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### Assignment address

A school should mail assignments to:

U.S. Department of Education  
Perkins Loan Assignment  
Processing Center  
P.O. Box 4136  
Greenville, TX 75403-4316

You do not have to reimburse the Perkins Loan Fund if your school can recover the defaulted loan or show the Department that the borrower would not have paid the loan even if your school properly exercised due diligence.

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

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

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

### *Perkins Liquidation*

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#### **Perkins loan liquidation procedures**

Dear Partner Letter CB-00-05

There are seven basic steps to liquidating a school's Perkins Loan portfolio:

- 1) Notifying the Department of Education of your school's intent to liquidate its Perkins Loan portfolio;
- 2) Assigning all of your outstanding Perkins Loans to the Department;
- 3) Continuing National Student Loan Data System reporting until all your outstanding Perkins Loans have been either fully retired, accepted for assignment, or purchased by your school;
- 4) Returning the federal share of your school's Perkins Loan revolving fund to the Department;
- 5) Filing the final Fiscal Operation Report;
- 6) Having an independent compliance audit conducted of all Perkins Loan funds your school has received; and
- 7) Reconciling the FISAP information reported by your school with Department data.

After the Department completes the reconciliation process and determines that your school has satisfied the liquidation requirements, we will send a letter of approval to your school.

## ADMINISTRATIVE COST ALLOWANCE (ACA)

A school participating in the Campus-Based programs is entitled to an ACA for an award year if it advances funds under the Perkins Loan Program, provides employment under the FWS Program, or awards grants under the FSEOG Program to students in an award year. The ACA may be used to help offset administrative costs, such as salaries, furniture, travel, supplies, and equipment. The ACA can also be used for service fees that banks charge for maintaining accounts. Computer costs associated with Perkins Loan billing may also be paid from this allowance. Schools may use the allowance to help pay the costs of administering not only the Campus-Based programs but the Federal Pell Grant Program as well. Administrative costs also cover expenses for carrying out the student consumer information services requirements.

The amount of the ACA is calculated as a percentage of the school's expenditures for students for an award year under the Campus-Based programs (see table below).

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### Administrative Cost Allowance (ACA) Calculation

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5% of the first \$2,750,000 of a school's expenditures to students under the Campus-Based programs	
	+
4% of expenditures to students greater than \$2,750,000 but less than \$5,500,000 under the Campus-Based programs	
	+
3% of expenditures to students greater than \$5,500,000 under the Campus-Based programs	

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When a school calculates its ACA for the 2006-2007 award year, the school is to include in its calculation the full amount of its FSEOG awards—both the 75% federal share and the required 25% nonfederal share. However, a school that chooses to provide more than a 25% institutional share to FSEOG recipients may not include an FSEOG institutional share in excess of 25% in its FISAP or in the calculation of its ACA.

If a school makes no match after receiving a waiver of its required institutional share for the FSEOG Program or the FWS Program, that school's ACA may be calculated only on the full federal portion of its awards for those programs.

The school takes the ACA out of the annual authorizations the school receives for the FSEOG and FWS programs and from the available cash on hand in its Perkins Loan fund. It is not a separate allowance sent to the school. A school may draw its allowance from any combination of Campus-Based programs, or it may take the total allowance from only one program provided there are sufficient funds in that program. However, a school may not draw any part of its allowance from a Campus-Based program unless the school has

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#### Administrative cost allowance

34 CFR 673.7

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#### FSA Assessment: Administrative Cost Allowance

<http://ifap.ed.gov/qadocs/>

FiscalManagement/Activity8FM.doc

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#### Using ACA to Train FWS Tutor

A school may use a portion of its administrative cost allowance (ACA) to cover the costs of training an FWS tutor. A school may also use a portion of its ACA to cover expenses that are related to employing a student as a tutor with a local school district and that the school may not incur with another organization. If, for example, a school district requires all employees to undergo a background check and be fingerprinted at a cost of \$40 per employee, the postsecondary school may use a portion of its ACA to cover this cost. The FWS Program does not provide for any additional funds beyond the ACA for technical assistance and training of tutors.

disbursed funds to students from that program during the award year. If a school charges any ACA against its Perkins Loan fund, it must charge these costs during the same award year in which the expenditures for these costs were made.

Your school may use up to 10% of the ACA, as calculated above, as attributable to its expenditures under the FWS Program to pay the administrative costs of conducting its program of community service. These costs may include:

- developing mechanisms to assure the academic quality of a student's experience;
- assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and
- 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.

Some schools do not claim an ACA so that all the funds can be used for student awards. This option is the school's decision.

## CERTIFICATIONS A SCHOOL MUST SUBMIT TO THE DEPARTMENT

The Department has incorporated the following form into Part I of the FISAP: Form 80-0013, Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements. The Standard Form LLL, Disclosure of Lobbying Activities, should only be completed if a school expends funds for lobbying activities. The form can be printed from FISAP on the Web. To participate in the Campus-Based programs each award year, a school's chief executive officer must complete, sign, date, and submit to the Department the above certification forms with the school's completed FISAP by the established deadline. A detailed discussion of the certification requirements is in *Volume 2*.

# Operating a Federal Work-Study Program

*This chapter covers issues specific to operating Federal Work-Study, Job Location and Development, and Work-College programs. For student eligibility criteria relating to campus-based programs, including FWS, refer to Volume 1. For information on selecting campus-based recipients, and calculating and packaging campus-based awards, see Volume 3. For information on disbursing campus-based aid, see Volume 4.*

## ASSIGNING FWS JOBS

Federal Work-Study (FWS) jobs may be on or off campus. Off-campus FWS jobs with federal, state, or local public agencies or private nonprofit organizations must be in the public interest. Off-campus FWS jobs with private, for-profit organizations must be academically relevant to the maximum extent possible. Also, your school **must** use at least 7% of its FWS allocation to employ students in community service jobs with at least one FWS student employed as a reading tutor for children in a reading tutoring project or performing family literacy activities in a family literacy project.

A school must make FWS jobs reasonably available to all eligible students at the school. To the maximum extent practicable, a school must provide FWS jobs that complement and reinforce each recipient's educational program or career goals.

In assigning an FWS job, a school must consider the student's financial need, the number of hours per week the student can work, the period of employment, the anticipated wage rate, and the amount of other assistance available to the student. While there is no minimum or maximum award, the amount for each student should be determined based on these factors.

## EMPLOYMENT CONDITIONS AND LIMITATIONS

FWS employment must be governed by employment conditions, including pay, that are appropriate and reasonable according to the type of work performed, the geographic region, the employee's proficiency, and any applicable federal, state, or local law.

FWS employers must pay students at least the federal minimum wage in effect at the time of employment (\$5.15 as of September 1997). The Small Business Job Protection Act of 1996 established a subminimum, or training wage that is lower than the minimum wage.

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### 7% cite

34 CFR 675.18(g)



However, it is not permissible to pay the subminimum wage rate to students in FWS jobs.

Also, as noted earlier, the pay must meet the requirements of the state or local law. This means that when the state or local law requires a higher minimum wage, the school must pay the FWS student that higher wage. However, if the state or local law allows a wage that is less than the Federal minimum wage, the FWS student must be paid at least the Federal minimum wage.

A student's need places a limit on the total FWS earnings permissible but has no bearing on his or her wage rate. It is not acceptable to base the wage rate on need or on any other factor not related to the student's skills or job description. If a student's skill level depends on his or her academic advancement, the school may pay a student on that basis. For example, a junior or third-year lab student may be paid a higher rate than a sophomore or second-year lab student. However, in most cases, students performing jobs comparable to those of other employees should be paid comparable wages, whether the other employees are students at different class levels or are regular employees.

FWS employment must not displace employees (including those on strike) or impair existing service contracts. Also, if the school has an employment agreement with an organization in the private sector, the organization's employees must not be replaced with FWS students. Replacement is interpreted as displacement.

FWS positions must not involve constructing, operating, or maintaining any part of a building used for religious worship or sectarian instruction. In determining whether any FWS employment will violate this restriction, a school should consider the purpose of the part of the facility in which the work will take place and the nature of the work to be performed. If the part of the facility in which the student will work is used for religious worship or sectarian instruction, the work cannot involve construction, operation, or maintenance responsibilities. If that part of the facility is not being used for religious worship or sectarian instruction, the school should make sure that any work the student will perform meets general employment conditions and that other limitations are not violated.

Neither a school nor an outside employer that has an agreement with the school to hire FWS students may solicit, accept, or permit the soliciting of any fee, commission, contribution, or gift as a condition for a student's FWS employment. However, a student may pay union dues to an employer if they are a condition of employment and if the employer's non-FWS employees must also pay dues.

The Fair Labor Standards Act of 1938, as amended, prohibits employers (including schools) from accepting voluntary services from any paid employee. Any student employed under FWS must be paid for all hours worked.

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#### **FWS limitations on religious jobs**

675.20(c)(2)(iv)

A student may earn academic credit as well as compensation for FWS jobs. Such jobs include but are not limited to internships, practica, or assistantships (e.g., research or teaching assistantships). However, a student employed in an FWS job and receiving academic credit for that job may not be:

- paid less than he or she would be if no academic credit were given;
- paid for receiving instruction in a classroom, laboratory, or other academic setting; and
- paid unless the employer would normally pay the person for the same job.

### *FWS earnings for the next period of enrollment*

Many FWS students must pay the bulk of their education costs in the beginning of each period of enrollment before they have had a chance to earn FWS wages. To provide the opportunity to earn wages before incurring education costs, the Department allows students to earn FWS wages to cover expenses for the next period of enrollment offered by the school. The student must be planning to enroll for that next period and must demonstrate financial need for it. The next period of enrollment is usually the next term, including a summer period, or in the case of summer earnings, the next full academic year. A student may earn FWS wages toward the next period of enrollment during any period, including during a period of non-attendance (see below) or a period of enrollment made up, in whole or in part, of mini-sessions.

### *Periods of non-attendance for FWS students*

A student may be employed under FWS during a period of nonattendance, such as a summer term, an equivalent vacation period, the full-time work period of a cooperative education program, or an unattended fall or spring semester. The student must be planning to enroll for the next period of enrollment and must have demonstrated financial need for that period. The student's net earnings (earnings minus taxes and job-related costs) during this period of nonattendance must be used to cover expenses associated with her financial need for the next period of enrollment, which is usually the next term, including a summer period, or in the case of summer earnings, the next full academic year.

A student who was not attending school in the summer but who was eligible for summer FWS employment because he anticipated being enrolled in the fall may fail to then attend school. When a student fails to attend for the next period of enrollment, the school that employed him must be able to demonstrate that he was eligible for employment and that the school had reason to believe the student intended to study at that school in the next period of enrollment. At a minimum, the school that employed the student must keep a written record in its files showing that he had accepted the school's offer of admittance for the next period of enrollment.

A student in an eligible program of study abroad may be employed during a period of non-attendance preceding the study abroad if she will be continuously enrolled in her American school while abroad and if her study is part of the American school's own program. In such a case, a student may be employed in a qualified position in the United States, at the American school's branch campus in a foreign country, or at a U.S. government facility abroad.

### ***FWS Mini-sessions***

If a school combines a series of mini-sessions or modules into one term (e.g., three summer mini-sessions into one summer term), an FWS student attending any of the mini-sessions may earn FWS wages at any time throughout that term. The school may apply those earnings toward the student's financial need for the mini-session(s) attended or the next period of enrollment. The school must base the student's financial need for attending the summer term on the period of time for which the student is actually enrolled in the mini-sessions.

The amount of FWS wages a student may earn at any point in the term does not depend on whether the student is then enrolled in a mini-session. The school or student may choose how to distribute the hours worked throughout the summer term.

## **COMMUNITY SERVICE JOBS**

Schools must make students aware of community service opportunities by encouraging them to get involved in community service activities. The program participation agreement also requires your school to work with local nonprofit, governmental, and community-based organizations to identify community service opportunities, including those that assist supportive services to students with disabilities, and inform Federal Work-Study (FWS) students of these opportunities (see Chapter 1).

Your school must use at least 7% of its FWS allocation to employ students in community service jobs (see Chapter 1). At least one of the FWS students your school employs to fulfill this requirement must work:

- performing family literacy activities in a family literacy project that provides services to families with preschool age children or elementary school children; or
- as a reading tutor for children who are preschool age or are in elementary school.

Employing an FWS student in these positions serves the needs of the community and gives the FWS student an enriching and rewarding experience. To further encourage schools to employ FWS students in these positions and as mathematics tutors, FWS regulations authorize a 100% federal share of FWS wages (see Chapter 1).

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### **Community service**

Dear Colleague Letter CB-97-12, dated July 1997

Dear Colleague Letter CB-94-4, dated March 1994

## How are Community Services Defined?

**Community services** are defined as services that are identified by an institution of higher education through formal or informal consultation with local nonprofit, government, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include:

- such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;
- work in service opportunities or youth corps as defined in Section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions, and activities designated in Section 124(a) of that act;
- support services for students with disabilities (including students with disabilities who are enrolled at the school)\*; and
- activities in which an FWS student serves as a mentor for such purposes as tutoring (see “Employing reading and mathematics tutors,” in this chapter), supporting educational and recreational activities, and counseling, including career counseling.

To be considered employed in a community service job for FWS purposes, an FWS student does not have to provide a “direct” service. The student must provide services that are designed to improve the quality of life for community residents or to solve particular problems related to those residents’ needs. A school may use its discretion to determine what jobs provide indirect or direct service to the community.

In determining whether the service is a community service, the school must always consider whether the service provided by the FWS student primarily benefits the community as opposed to the agency or school. See Appendix B at the end of this chapter for a model need assessment form that can be used with community service agencies.

The Department does not intend to indicate that certain activities are more important than others or that only jobs that have direct contact with community members are acceptable. For example, an FWS student working for the Meals on Wheels Program may prepare meals for the program without having any direct contact with the community residents, yet the service he or she is providing is very important in meeting community needs.

There is no restriction as to whether these jobs must be on or off campus. However, a university or college is not considered a

\*This is the only statutory exception to the requirement that community service be open and accessible to the community.

### Definition of community services

34 CFR 675.2(b)

The definition of community services includes the terms “service opportunity” and “youth corps program.” Section 101 of the National and Community Service Act of 1990 defines the terms as follows:

**Service opportunity.** A program or project, including a service learning program or project, that enables students or out-of-school youth to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty.

**Youth corps program.** A program, such as a conservation corps or youth service program, that offers full-time, productive work (to be financed through stipends) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services.

community for the purposes of the FWS Program community service requirements. On-campus jobs can meet the definition of community services, provided that the services are open and accessible to the community and that they meet the regulatory and statutory provisions pertaining to the applicable FWS Program employment limitations and conditions. A service is considered open to the community if the service is publicized to the community and members of the community use the service. For example, an on-campus day care service or tutor center that is used by members of the community (not just faculty and staff) can be considered a community service.

If a school provides community services through off-campus sites, these services are considered community services as long as the services are open to the community.

Private, for-profit organizations do not qualify as employers for community service under the FWS Program.

In contacting potential community service agencies, schools should place a priority on jobs that will meet the human, educational, environmental, and public safety needs of low-income individuals. The Department has determined that at this time there is no need to burden schools with a formal definition of low-income individual for purposes of providing community service under the FWS Program. There is no statutory requirement that a particular number or proportion of the individuals must be low-income persons. Some examples of jobs that provide services to persons in the community who may not necessarily be low-income individuals are jobs that provide supportive services to students with disabilities or that prevent or control crime.

## LIST OF AGENCIES, INSTITUTIONS, AND ACTIVITIES INCLUDED IN THE DEFINITION OF COMMUNITY SERVICES

The definition of “community services” includes service in agencies, institutions, and activities that are designated in Section 124(a) of the National and Community Service Act of 1990:

1. Conservation corps programs that focus on:
  - conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreation areas;
  - urban and rural revitalization, historical and site preservation, and reforestation of both urban and rural areas;
  - fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;
  - road and trail maintenance and improvement;
  - erosion, flood, drought, and storm damage assistance and controls;

- stream, lake, waterfront harbor, and port improvement;
  - wetlands protection and pollution control;
  - insect, disease, rodent, and fire prevention and control;
  - the improvement of abandoned railroad beds and rights-of-way;
  - energy conservation projects, renewable resource enhancement, and recovery of biomass;
  - reclamation and improvement of strip-mined land;
  - forestry, nursery, and cultural operations; and
  - making public facilities accessible to individuals with disabilities.
2. Human services corps programs that include service in:
- state, local, and regional government agencies;
  - nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult daycare centers, programs serving individuals with disabilities, and schools;
  - law enforcement agencies and penal and probation systems;
  - private nonprofit organizations that primarily focus on social service such as community action agencies;
  - activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and
  - any other nonpartisan civic activities and services that the commission determines to be of a substantial social benefit in meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or
3. Programs that encompass the focus and services described in both paragraphs (1) and (2).

## ESTABLISHING FWS COMMUNITY SERVICE JOBS

### *Step #1: Identify Potential Jobs and Employers*

#### **Identify jobs**

- Brainstorm types of jobs that would meet the community service requirement. What jobs do your students currently hold, on campus or off campus, that meet the community service definition?
- Communicate the community service requirements to your school's student employment office.

#### **Identify employers**

- Which local community service organizations might be interested in employing your FWS students?
- Contact local nonprofit, government, and community-based organizations to assess their needs and determine what interest exists for employing FWS students.

#### **Talk to colleagues**

- Talk to colleagues at other schools to get ideas on implementing, locating, and developing the community service jobs.

### *Step #2: Research Your Students' Interest in Community Service*

- Research your FWS students' degrees or certificate programs, interests, and skills to determine which recipients might find community service jobs appealing.

### *Step #3: Promote Community Service Jobs*

- Devise a plan to market community services under the FWS Program to eligible student employers and the community;
- obtain a listing of potential community service agencies;
- ask to be a presenter at various organizations' meetings;
- engage in networking activities;
- hold and attend job fairs;
- host a financial aid office "open house;" and
- visit local agencies.

## What is a Family Literacy Project? How are Family Literacy activities defined?

Research shows that children whose parents work with them on literacy skills during early childhood have a better chance of reading well and independently. The family literacy concept recognizes the family as an institution for education and learning and the role of parents as their children’s first teachers.

A family literacy program integrates four components. It provides:

- literacy or pre-literacy education to children,
- literacy training for parents or other caregivers of children in the program,
- a means of equipping parents or other caregivers with the skills needed to partner with their children in learning, and
- literacy activities between parents or other caregivers and their children.

This definition is consistent with the Even Start and Head Start definitions of family literacy programs.

The Department does not define “family literacy activities” for purposes of the community service expenditure requirement or the waiver of the institutional share requirement. The Department gives schools reasonable flexibility to determine the job description and duties for an FWS student performing family literacy activities.

**Family literacy activities are not limited to just tutoring positions.** For example, family literacy activities may include training tutors, performing administrative tasks such as coordinating the tutors, or working as an instructional aide who prepares the materials for the project. However, it would not be reasonable to include janitorial or building repair jobs as family literacy activities.

## WORK ON CAMPUS

A student may be employed on campus at any type of postsecondary institution, including at a proprietary school. A school, other than a proprietary school, may employ a student to work for the school itself, **including** certain services for which the school may contract, such as food service, cleaning, maintenance, and security. Work for the school’s contractors is acceptable as long as the contract specifies the number of students to be employed and specifies that the school selects the students and determines their pay rates. A proprietary school also may employ a student to work for the school itself with certain restrictions (discussed below under “Work for Proprietary School”).

At any type of postsecondary institution, including proprietary schools, an FWS student may be assigned to assist a professor if the

### Family literacy project definition

Dear Colleague Letter CB-98-6, dated May 1998

### Reading tutor/family literacy project

34 CFR 675.18(g)

### On-campus employment

34 CFR 675.21



student is doing work the school would normally support under its own employment program. Having a student serve as a research assistant to a professor is appropriate, as long as the work is in line with the professor's official duties and is considered work for the school itself.

## EMPLOYMENT IN A FOREIGN COUNTRY

Normally, employment in a foreign country is not permissible under the law. However, a school with a branch campus in a foreign country may employ students under FWS if the branch has its own facilities, administrative staff, and faculty. Students may also be employed by a U.S. government facility such as an embassy or a military base. A student may not be employed for a nonprofit organization in a foreign country.

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### Proprietary school employment

34 CFR 675.21(b)

## WORK FOR PROPRIETARY SCHOOL

A proprietary school may employ a student to work for the school itself but only in jobs that meet certain criteria:

1. If the jobs are in community service, they may be either on or off campus. Students employed by a proprietary school and performing community service do not have to furnish student services that are directly related to their education.
2. If the jobs are **not** in community service, they must be on campus and must:
  - provide student services that are directly related to the FWS student's training or education;
  - not involve soliciting potential students to enroll at the proprietary school; and
  - to the maximum extent possible, complement and reinforce the FWS student's educational program or vocational goals.

## STUDENT SERVICES

Student services are services that are offered to students. Students are persons enrolled or accepted for enrollment at the school. An FWS student who provides services only to the school's former students is not providing student services because the services are not offered to currently enrolled students. However, an FWS student who provides services to both current students and former students *is* providing student services, because the services *are* offered to currently enrolled students. For example, an FWS student provides job placement assistance to current students and alumni of the school. The FWS student is considered to be providing student services because his or her services are offered to current students, as well as alumni.

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### Student services definition cite

34 CFR 675.2(b)

Student services do not have to be direct services or involve personal interaction with other students. Services are considered student services if the services provide a benefit either directly or indirectly to students. For example, an FWS student may work in assisting an instructor in the lab or in other work related to the instructor's official academic duties at the school. See the sidebar for an expanded list of examples of jobs that provide student services. The list is not exhaustive. The fact that a job has some operational functions does not preclude it from being an acceptable FWS job as long as it furnishes student services.

At a proprietary school, FWS students may not work in non-community service jobs that are not student services. In general, jobs that primarily benefit the proprietary school are not student services. For example, jobs in facility maintenance or cleaning are never student services. See the sidebar for a list of examples of jobs that do not provide student services. Again, this list is not exhaustive. Jobs in the admissions or recruitment area of a school are not acceptable student services because such jobs are considered to involve soliciting potential students to enroll at the school.

The non-community service job must provide student services that are directly related to the FWS student's training or education. This does not mean that the FWS student must be enrolled in an academic program for that field. Instead, it means that the FWS student must be receiving work experiences that are directly applicable to the skills needed for his or her career path. For example, an FWS student enrolled in an air-conditioning repair program wants to work in the school's library. Although the student is not pursuing a career as a librarian, the student would still be able to work in the library. The job is directly related to his or her training because he or she is learning customer service and basic office functions that are applicable to work in an air-conditioning repair shop or dealership. Similarly, a job in another student service office such as financial aid, registrar, and job placement would also be considered directly related to the FWS student's training.

**Student services may include:**

- jobs in financial aid
- jobs in a library
- peer guidance counseling
- job placement
- assisting an instructor with curriculum-related activities (e.g., teaching assistant)
- security
- social and health services
- tutoring

**Student services never include:**

- facility maintenance
- cleaning
- purchasing
- public relations

## WORK OFF CAMPUS

### *Work Off Campus for Nonprofit or Government Agency*

If a student is employed off campus by a federal, state, or local public agency or by a private nonprofit organization, providing jobs related to the student's academic or vocational goals is encouraged, but not required. However, the work performed **must be in the public interest**. Work in the public interest is defined as work performed for the welfare of the nation or community, rather than work performed for a particular interest or group.

Work is not "in the public interest" if:

- it primarily benefits the members of an organization that has membership limits, such as a credit union, a fraternal or religious order, or a cooperative;
- it involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office;
- it is for an elected official unless the official is responsible for the **regular** administration of federal, state, or local government;
- it is work as a political aide for any elected official;
- it takes into account a student's political support or party affiliation in hiring him or her; or
- it involves lobbying on the federal, state, or local level.

A private nonprofit organization is one in which no part of the net earnings of the agency benefits any private shareholder or individual. An organization must be incorporated as nonprofit under federal or state law. A school classified as a tax-exempt organization by either the federal or state Internal Revenue Service meets this requirement. Examples of private nonprofit organizations generally include hospitals, daycare centers, halfway houses, crisis centers, and summer camps.

Nonprofit agencies do not qualify automatically as community service employers for purposes of the FWS Program because the work performed must meet the definition of community services in the regulations. A list of programs or activities that are recognized as appropriate work in community services under the FWS Program is included at the end of this section. In addition, work off campus for a nonprofit agency must be in the public interest.

However, in deciding whether work is in the public interest, schools must consider the nature of the work as well as that of the organization. For example, a private nonprofit civic club may employ a student if the student's work is for the club's community drive to aid handicapped children. If the student's work is confined to the internal interests of the club, such as a campaign for membership, the work would benefit a particular group and would not be in the public interest. As another example, a student may work for a private nonprofit membership organization, such as a golf club or swimming pool, if the general public may use the organization's facilities on the same basis as its members. If only members may use the facilities, FWS employment is not in the public interest.

Political activity, whether partisan or nonpartisan, does not qualify as work in the public interest. For example, a student is not considered to be working in the public interest if working at voting polls—even if he or she only checks off the names of those who came to vote and does not pass out flyers supporting a particular candidate. Also, a student is not considered to be working in the public interest if

working to support an independent candidate. Another example of nonpartisan political activity is work for a city political debate.

Working for an elected official as a political aide also does not qualify as work in the public interest. For example, a student could not represent a member of Congress on a committee. However, a student could be assigned to the staff of a standing committee of a legislative body or could work on a special committee, as long as the student would be selected on a nonpartisan basis and the work performed would be nonpartisan.

Under certain circumstances, work for an elected official responsible for the **regular administration** of federal, state, or local government may be considered to be in the public interest. “Regular administration” means the official is directly responsible for administering a particular function. Such a person would not create, abolish, or fund any programs, but would run them. Working for a sheriff would be acceptable, as would working for an elected judge (because he or she has direct responsibility for the judicial system). As stated above, any **political** activity would not be acceptable—raising funds for the official’s reelection, for example. An FWS position that involves lobbying at the federal, state, or local level is not work in the public interest. FWS students are prohibited from working for the Department of Education due to the potential appearance of conflict of interest.

### *Work Off Campus for Private For-Profit Companies*

Schools also may enter into agreements with private for-profit companies to provide off-campus jobs for students; however, these jobs must be academically relevant, to the maximum extent practicable, to the student’s program of study. (A student studying for a business administration degree could work in a bank handling customer transactions, for example.) Private for-profit organizations do not qualify as employers for community service under the FWS Program.

Private for-profit organizations may not hire FWS employees to replace regular employees.

Chapter 1 describes further limitations on the use of FWS funds to pay students employed at private for-profit organizations.

## OFF-CAMPUS AGREEMENTS

If your school would like an off-campus organization to employ FWS students, your school must enter into a written agreement—a contract—with the off-campus organization. A written agreement is required with the off-campus organization even if your school is considered the employer of the FWS student. The school must make sure the off-campus organization is a reliable agency with professional direction and staff and that the work to be performed is consistent with the purpose of the FWS Program. (See Appendix A at the end of

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### Off-campus agreements

34 CFR 675.20(b)

this chapter for a model off-campus agreement. The sample need not be followed exactly but serves as a guide.)

The agreement should specify what share of student compensation and other costs will be paid by the off-campus organization. For-profit organizations **must** pay the nonfederal share of student earnings. Any off-campus organization **may** pay:

- the nonfederal share of student earnings;
- required employer costs, such as the employer's share of Social Security or workers' compensation; and
- the school's administrative costs not already paid from its administrative cost allowance (ACA).

The agreement sets forth the FWS work conditions and establishes whether the school or the off-campus organization will be the employer for such purposes as hiring, firing, and paying the student. The employer is generally considered to be the entity that will control and direct the work of the FWS students—supervising them at the work site, regulating their hours of work, and generally ensuring that they perform their duties properly. However, the school is ultimately responsible for making sure that payment for work performed is properly documented and that each student's work is properly supervised.

The agreement should define whether the off-campus organization will assume payroll responsibility and bill the school for the federal share of the students' wages, or whether the school will pay the students and bill the off-campus organization for its contribution. The school must make up any payments the off-campus organization does not make. It is the school's responsibility to ensure that FWS payments are properly documented, even if the off-campus organization does the payroll. To fulfill that responsibility, the school must keep copies of time sheets and payroll vouchers and keep evidence that the students were actually paid (usually copies of the canceled checks or receipts signed by the students). Payroll records are discussed in detail later in this chapter.

The school is also responsible for ensuring that each student's work is properly supervised. School officials should periodically visit each off-campus organization with which they have an off-campus agreement to determine whether students are doing appropriate work and whether the terms of the agreement are being fulfilled.

The agreement must state whether the school or off-campus organization is liable for any on-the-job injuries to the student. The employer is not automatically liable. Federal FWS funds cannot be used to pay an injured student's hospital expenses.

In determining whether to continue an off-campus agreement, many schools have found it helpful to require that students submit a formal evaluation of their work experience at the end of the

assignment. The school may also use the evaluation to help off-campus agencies improve their work programs.

Staff members of the off-campus organization must become acquainted with a school's financial aid and student employment programs to better understand the school's educational objectives. The school must supply the off-campus organization with this information.

## EMPLOYING FWS STUDENTS AS TUTORS

Many schools employ FWS students as reading or mathematics tutors. This type of employment allows students to help children develop reading or mathematics skills necessary for their education and future employment.

There is no limit on the amount of funds a school can spend from its FWS allocation to pay FWS reading or mathematics tutors.

When employing students as reading tutors, schools must, to the maximum extent possible, give placement priority to schools that are participating in a reading reform project that is (1) designed to train teachers how to teach reading on the basis of scientific research on reading; and (2) is funded under the Elementary and Secondary Education Act of 1965. The school must further ensure that reading tutors receive training from the employing school in the instructional practices used by the school.

For more information, see Frequently Asked Questions (FAQs) on the next page.

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### Reading reform cite

34 CFR 675.18(g)(3)

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### Reading and math tutors

Dear Colleague Letter CB-97-12, dated July 1999

Dear Partner Letter CB-99-12, dated July 1997

## EMPLOYING FWS STUDENT AS TUTORS: FAQs

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### What are the requirements for a “reading tutor” or “math tutor?”

The Department does not define “tutor” for the FWS Program. This gives schools flexibility in determining the job description and duties of a tutor. For example, a reading tutor could be an FWS student who reads to a group of preschoolers in a public library.

An FWS student employed as a tutor does not have to meet certain statutory (for reading tutors) or regulatory (for reading and mathematics tutors) educational standards or qualifications for the school to receive an institutional-share waiver. However, an FWS reading or math tutor must have adequate reading or math skills, as appropriate, and the Department strongly recommends that the tutors be well trained before they tutor.

The Department does not require background checks of FWS tutors. However, some state and local jurisdictions may require such checks. The requirements will vary according to the agency or organization involved.

### What is a preschool age child?

A preschool age child is a child from infancy to the age at which his or her state provides elementary education.

### What is the definition of an elementary school?

The definition of an elementary school varies from state to state. Because the Department does not wish to interfere with a state's determination of what constitutes children who are in elementary school, we will not provide guidance on the maximum grade level for elementary school for purposes of the institutional-share waiver for tutoring.

### What setting must the tutoring take place in?

Tutoring may be one-on-one or in a group. Tutoring sessions can take place in a school setting or another location, such as a public library or community center. Tutoring sessions can be held during regular school hours, after school, on weekends, or in the summer.

### Can FWS students tutor children in parochial schools?

An FWS student can tutor a child in a parochial school under certain conditions:

- The parochial school must be classified as a private, nonprofit school by the Internal Revenue Service or a state taxing body;
- The work may not involve constructing, operating, or maintaining any part of a building used for religious worship or sectarian instruction; and
- The FWS tutor may not use religious material to tutor the child.

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## EMPLOYING FWS STUDENT AS TUTORS: FAQs (cont'd)

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### Should tutors be trained?

The Department strongly recommends that the tutors be well trained before they tutor. When an FWS student receives training from a specialist or expert for sufficient duration and intensity, he or she is more likely to be successful with the child he or she is tutoring. Tutor training should emphasize the importance of the tutor's communication with the regular classroom teacher to maximize effectiveness. The amount and type of training will often vary, depending on the needs of the child who is being tutored and the subject being studied. (See Chapter 1 for information on using the administrative cost allowance to pay for the cost of training tutors.)

### Can students be paid while in training?

Under limited circumstances, an FWS tutor can receive FWS wages while he or she is being trained, and these wages can qualify for a waiver of the institutional share. This training period must be only for a reasonable and limited length of time. The Department would not consider a training period of an academic term to be reasonable. The Department would consider a reasonable training period to be one that occurs before the student begins tutoring and that does not exceed approximately 20 hours. A school may not pay an FWS student to take an academic course the school developed to provide classroom training on tutoring children. An FWS student may take such a course as long as he or she is not paid for taking the course (34 CFR 675.18(h)). See Chapter 4 for more information.

### Can students be paid during preparation and evaluation activities?

The preparation time and evaluation time worked by an FWS tutor qualify for a 100% federal share as long as the time spent for this purpose is reasonable. For example, the Department would consider attending evaluation and preparation meetings once a week for approximately one hour to be reasonable. The Department wants to give some flexibility because of the value of evaluation and preparation time. However, the goal is to spend funds for FWS students to interact with the children and in family literacy programs, not for other activities.

### Will a tutoring job always satisfy the community service requirement?

An FWS tutor job might qualify for a waiver of the institutional share (100% federal share) but not qualify as part of the 7% community service requirement. If, for example, a postsecondary school employs FWS students to tutor young children in its daycare center and the center is not open and accessible to the community, the job would qualify for the waiver, but would not qualify as part of the 7% community service requirement.



## EMPLOYING FWS STUDENT AS TUTORS: FAQs (cont'd)

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### What if the FWS student is training tutors, performing related administrative tasks, or works another FWS job?

The wages of an FWS student who is training tutors or who is performing administrative tasks related to supporting other people who are actually providing the reading or mathematics tutoring do not qualify for a federal share of up to 100%; rather, an institutional share is required.

Remember that it is the FWS reading or mathematics tutor job, not the student working in the job, that qualifies for the institutional-share waiver. Thus, an FWS student who is working another FWS job in addition to the tutor job can be paid with 100% federal funds only for the time he or she is working as a tutor, not for time spent on the other job. If, for example, an FWS student spends only half of his or her time working as a reading tutor (including preparation and evaluation time) and the other half on non-tutoring tasks, the student may be paid 100% federal funds only for half the time and the other half must be paid with a maximum of 75% federal funds and a minimum of 25% nonfederal funds.

### How can my school start placing FWS students as tutors?

Your school may construct its own reading tutor program or join existing community programs.

You may use the Job Location and Development (JLD) Program to locate or develop jobs for FWS students as tutors of children. However, you may not use JLD funds exclusively for this purpose because you would be in violation of the JLD statutory requirement to expand off-campus jobs for currently enrolled students who want jobs regardless of their financial need.

## JOB LOCATION AND DEVELOPMENT PROGRAM

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**JLD purpose cite**

34 CFR 675.31

The Job Location and Development (JLD) Program is one of the FWS Programs. An institution is allowed to use part of the federal funds it receives under the FWS Program to establish or expand a JLD Program.

The JLD Program locates and develops off-campus job opportunities for students who are currently enrolled in eligible institutions of higher education and who want jobs regardless of financial need. This means that jobs may be located and developed under the JLD Program for FWS and non-FWS eligible students.

Under the JLD Program, your school must locate and develop off-campus jobs that are suitable to the scheduling and other needs of the employed student and must, to the maximum extent practicable, complement and reinforce the educational program or vocational goal of the student.

JLD jobs may be part time or full time, for either a for-profit or nonprofit employer.

The JLD Program encourages students to participate in community service activities. Your school must inform all eligible students of the opportunity to perform community services and must develop and make available information about community service opportunities. The JLD Program uses the same definition of community services that the FWS Program employs. However, the JLD Program does not have a specific minimum community service requirement, as does the FWS Program.

### *JLD Program Participation*

A school that participates in the FWS Program is also eligible to participate in the JLD Program. A school that has an executed Program Participation Agreement (PPA) for the FWS Program may participate in the JLD Program without any prior contact with the Department and without any revision to its PPA. Under the PPA, the school agrees to administer the JLD Program according to the appropriate statutory and regulatory provisions.

If the Department terminates or suspends a school's eligibility to participate in the FWS Program, that action also applies to the school's JLD Program.

### *Student Eligibility*

Any student employed in a job developed under the JLD Program must be currently enrolled at the school placing him or her in a job. A school may place in JLD jobs both students who do not meet FWS student eligibility criteria and those who do meet those criteria. However, using JLD funds to find jobs only for FWS students would not satisfy the program purpose of expanding off-campus jobs for students who want jobs regardless of financial need.

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**Maximum federal funds for JLD Programs cite**

34 CFR 675.32

***Use of FWS Allocation for JLD Program***

When establishing or expanding a program to locate and develop off-campus jobs, including community service jobs, a school may use up to the lesser of the following two amounts:

- 10% of its FWS allocation and reallocation; or
- \$50,000.

***Use of JLD Program Funds***

Your school may use federal JLD funds to pay for the cost of establishing and administering the JLD Program. You may not use JLD funds to:

- pay students whose jobs were located and developed through the JLD Program;
- locate and develop jobs at your school or other eligible schools;
- place students upon graduation; and
- displace employees or impair existing service contracts.

A school is expected to generate total student wages exceeding the total amount of the federal funds spent under JLD.

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**Use of JLD funds cite**

34 CFR 675.35(a)(2)

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**Federal and institutional shares**

34 CFR 675.33(b)

34 CFR 675.33(c)

***Federal Share Limitation***

You may use federal FWS funds to pay up to 80% of the allowable costs (listed below). Your school must provide the remaining 20% of allowable costs either in cash or in services. This requirement, unlike the institutional-share requirement for FWS earnings, cannot be waived.

The institution's 20% share may be either (1) 20% of each allowable cost, or (2) varying percentages of allowable costs, as long as its total expenditures of institutional funds and/or provision of services equals at least 20% of the total allowable costs for the JLD Program.

You must maintain records that indicate the amount and sources of your school's matching share. Procedures and records requirements for JLD are the same as those for all campus-based programs.

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**Allowable costs cite**

34 CFR 675.33(a)

***Allowable Program Costs***

Allowable costs of carrying out the JLD Program include:

- staff salaries (and fringe benefits, if they are the same as those paid to other institutional employees in comparable positions and are not paid to a student employed through the FWS Program);
- travel expenses related to JLD activities;

- printing and mailing costs for brochures about the JLD Program;
- JLD telephone charges, including installation of a separate line for off-campus employers;
- JLD costs for supplies, equipment, and furniture;
- newspaper or other types of advertising that inform potential employers of the services JLD offers; and
- JLD workshops for students and employers.

Costs that are not allowable are costs related to purchasing, constructing, or altering the facilities that house a JLD project. Indirect administrative costs also are not allowable. One example of an indirect administrative cost is a portion of the salary of someone who is not directly involved in the program, such as the JLD director's supervisor. Other examples of indirect administrative costs are lighting, heating, or custodial costs incurred as part of the normal operations of the facility in which the JLD Program is administered, such as the financial aid or placement offices.

### *Students as Staff in the JLD Program office*

The prohibition against using JLD funds to locate and develop jobs at any school **does not** mean that your school is also prohibited from employing FWS and non-FWS students as staff in the JLD Program office. Your school may employ FWS and non-FWS students as staff in the JLD Program office as long as you do not use JLD funds to locate and develop these jobs. For example, your school could use the FWS Program to employ an FWS student as a staff member in the JLD Program office.

If your school places an FWS student as staff in the JLD Program office, there are some important points to note. The statute and the FWS regulations prohibit the use of any funds allocated under the FWS Program from being used to pay the institutional share of FWS compensation to its students. Hence, your school may not use federal JLD funds to pay the institutional share of FWS wages earned by an FWS student working as staff in the JLD Program office. Instead, you must use your school's funds to pay the institutional share of these wages.

### *JLD Reporting on the FISAP*

If your school participates in the JLD Program during an award year, you must provide information about its JLD activities on the *Fiscal Operations Report and Application to Participate* (FISAP). You must report the total JLD expenditures, federal expenditures for JLD, institutional expenditures for JLD, number of students for whom jobs were located or developed, and total earnings for those students.

Your school **may not** include student staff jobs in the JLD Office on the FISAP in the JLD section for reporting the count of students and the earnings of students for whom jobs were located or

developed through the JLD Program. However, if your school used its own funds to pay the institutional share of wages for student staff jobs, you may count those funds in meeting the minimum 20% institutional-share requirement for the JLD Program.

### ***Multi-Institutional JLD Programs***

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#### **Multi-institutional programs cite**

34 CFR 675.34

Your school may enter a written agreement with other eligible schools for those schools to establish and to operate a JLD Program for its students. The agreement must designate the administrator of the program and must specify the terms, conditions, and performance standards of the program. Each school that is part of the agreement retains responsibility for properly disbursing and accounting for the federal funds it contributes under the agreement.

For example, each school must show that its own students have earned wages that exceed the amount of federal funds the school contributed to locate and develop those jobs. This fiscal information must be reported on each school's FISAP.

If your school uses federal funds to contract with another school, suitable performance standards must be part of that contract. Performance standards should reflect each school's philosophy, policies, and goals for the JLD Program. You may not develop performance standards, conditions, or terms that are inconsistent with the statute or regulations. In all cases, the performance standards should be clearly understandable, because they will be included in the formal written agreement that each party must observe as part of its responsibility within the particular arrangement.

## **WORK-COLLEGES PROGRAM**

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#### **Application to participate in the Work-Colleges Program**

DCL CB-05-02, February 2005

The Higher Education Amendments of 1992 authorized the Work-Colleges Program. Schools that satisfy the definition of "work-college" may apply to the U.S. Department of Education to participate in the program. A work-college may transfer funds from its allocation for the FWS Program and/or Federal Perkins Loan Program to fund the school's Work-Colleges Program.

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#### **Purpose of Work-Colleges Program cite**

34 CFR 675.43

The Work-Colleges Program recognizes, encourages, and promotes the use of comprehensive work-learning programs as a valuable educational approach when used as an integral part of the school's educational program and as a part of a financial plan that decreases reliance on grants and loans. The program also encourages students to participate in community service activities.

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#### **Definition of Work-College cite**

34 CFR 675.41

The term "work-college" is defined as an eligible institution that:

- is a public or private nonprofit school with a commitment to community service;

- has operated a **comprehensive work-learning program** for at least two years;
- provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole;
- requires all students who reside on campus to participate in a comprehensive work-learning program; and
- requires providing services as an integral part of the school's educational program and as part of the school's educational philosophy.

A “comprehensive student work-learning program” is defined as a student work/service program that:

- is an integral and stated part of the institution's educational philosophy and program;
- requires participation of all resident students for enrollment, participation, and graduation;
- includes learning objectives, evaluation, and a record of work performance as part of the student's college record;
- provides programmatic leadership by college personnel at levels comparable to traditional academic programs;
- recognizes the educational role of work-learning supervisors; and
- includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

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#### Comprehensive student work-learning program definition cites

HEA Section 448  
34 CFR 675.41(b)

### Allowable Costs

The Higher Education Amendments of 1998 provided for additional flexibility for work-colleges in the use of funds. Allocated program funds may be used to:

- support the educational costs of students through self-help provided under the work-learning program within the limits of their demonstrated financial need;
- promote the work-learning-service experience as a tool of education and community service;
- carry out FWS and JLD program activities;
- administer, develop, and assess comprehensive work-learning programs;
- coordinate and carry out joint projects and activities to promote work-service learning; and
- conduct a comprehensive longitudinal study of academic progress and academic and career outcomes.

Additional requirements for the Work-Colleges Program are found in 34 CFR 675, Subpart C.

# Volume 6 Appendices

Appendix A: Model Off-Campus Agreement

Appendix B: Need Assessment for FWS Community Service Program

# Model Off-Campus Agreement



*The paragraphs below are suggested as models for the development of a written agreement between a school and a Federal, State, or local public agency or a private nonprofit organization that employs students who are attending that school and who are participating in the Federal Work-Study (FWS) Program. Institutions and agencies or organizations may devise additional or substitute paragraphs as long as they are not inconsistent with the statute or regulations.*

This agreement is entered into between \_\_\_\_\_, hereinafter known as the “Institution,” and \_\_\_\_\_, hereinafter known as the “Organization,” a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the Federal Work-Study Program [FWS].

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

- 1 brief descriptions of the work to be performed by students under this agreement;
- 2 the total number of students to be employed;
- 3 the hourly rates of pay, and
- 4 the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employer’s payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts. Two examples of Off-Campus Agreements are included to provide additional guidance.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

- 1 Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.
- 2 Transportation for students to and from their work assignments will be provided by the institution at its own expense.
- 3 Transportation for students to and from their work assignments will not be provided by either the institution or the organization.



(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.<sup>1</sup>)

- 1 The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the Federal Work-Study Program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.
- 2 The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining whether the students meet the eligibility requirements for employment under the Federal Work-Study Program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

- 1 At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.
- 2 In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.
- 3 At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:
  - a Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

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1. Although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording that specifies the employer's responsibility in case of injury on the job may also be advisable, since federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one state have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job, regardless of whether it is the institution or the organization that is ultimately determined to have been the student's employer when he or she was injured.

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- b A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll;<sup>2</sup> and
- c Documentary evidence that students received payment for their work, such as photographic copies of canceled checks.

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2. These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

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# Need Assessment for FWS Community Service Program



**Agency Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_

1. \_\_\_\_\_ Non-Profit \_\_\_\_\_ For Profit

2. Agency Mission Statement and Description of Clients Served:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Agency Funding Sources (check all that apply):

\_\_\_\_\_ Federal

\_\_\_\_\_ State

\_\_\_\_\_ County/City

\_\_\_\_\_ United Way

\_\_\_\_\_ Other (explain)

4. Agency's Fiscal Year: \_\_\_\_\_ to \_\_\_\_\_

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5. Agency's Staffing (number of positions):

\_\_\_\_ Full-time paid staff

\_\_\_\_ Part-time paid staff

\_\_\_\_ Student employees

\_\_\_\_ Volunteers

6. How many student jobs may be available at your agency during:

Summer 2006 \_\_\_\_\_

2006-2007 Academic Year \_\_\_\_\_

Summer 2007 \_\_\_\_\_

7. For each student job expected to be available as indicated in #6, provide the following information, attaching a separate sheet for each position.

Job Title

Rate or Range of Pay per Hour

Begin and End Dates

Work Schedule-Days and Hours

Total Hours/Week

Description of Duties

Qualifications and Experience (indicate preferred or required)

8. Has your agency hired students through the Federal Work-Study Program in the past?

\_\_\_\_ YES \_\_\_\_ NO

If YES:

Number of students: \_\_\_\_\_

Dates employed: \_\_\_\_\_

Average length employed: \_\_\_\_\_

9. Additional Comments:

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# Making Perkins Loans

*The Federal Perkins Loan Program includes Federal Perkins Loans, National Direct Student Loans (NDSLs), and National Defense Student Loans (Defense Loans). (No new Defense Loans were made after July 1, 1972, but a few are still in repayment.) Perkins Loans and NDSLs are low-interest (currently 5%), long-term loans made through school financial aid offices to help needy undergraduate and graduate students pay for postsecondary education. For Perkins disbursement rules, see Volume 4.*

## MAKING A PERKINS LOAN

A Perkins Loan (or NDSL) is made when the borrower has signed the Perkins Master Promissory Note (MPN) and the school makes the first disbursement of loan funds under that promissory note for that award year. The student is required to sign the MPN only once. Additional Perkins Loans may be disbursed to a student for up to 10 years after the date the MPN is signed. Although the borrower is only required to sign the MPN once, a school may choose to require a borrower to sign a new MPN for each award year. A student may also make a written request to sign a separate MPN for each award year.

After a student files a FAFSA and the Department determines an official Expected Family Contribution for the student, the school must award financial aid based on the student's loan eligibility and the maximum loan amounts for each loan program. For a complete explanation of awarding Perkins funds, see *Volume 3, Chapter 5, Awarding Campus-Based Aid*.

## LOAN TYPES AND MAXIMUMS

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

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

### ☀ Chapter Highlights ☀

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### Loan limits cite

34 CFR 674.12

#### Annual maximum loan:

Undergraduate: \$4,000  
Graduate: \$6,000

#### Aggregate maximum loan:

Undergraduate: \$20,000  
Graduate: \$40,000

**Maximum loan eligibility calculation**

<p><b>Financial Need</b></p> <p><b>(-) Other resources</b></p> <hr style="width: 50%; margin: 0 auto;"/> <p><b>= Maximum Perkins Loan</b></p>
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Note: All borrowing, including graduate level borrowing, counts against the undergraduate aggregate limit of \$20,000. In other words, the undergraduate loan limit applies to all loans, not just loans taken out as an undergraduate.

**Perkins Overaward resolution**

Overawards are discussed in detail in Volume 5

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

The annual maximums and aggregate maximums for both undergraduates and graduates include any amounts borrowed previously under the Federal Perkins Loan Program. Loans taken out as both undergraduate and graduate student status count toward the \$20,000 undergraduate limit.

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

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

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

**Disclosure**

34 CFR 674.16(a)

**DISCLOSURE TO STUDENTS**

**Before making the first Perkins Loan or NDSL disbursement for an award year, the school must inform the student of his or her rights and responsibilities under the Federal Perkins Loan Program.**

The school must also remind the student that the loan may be used only for educational expenses and that the loan must be repaid. The school should also inform the student that the **school** holds the MPN.

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

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

- the name and address of the school to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent;
- the maximum annual and aggregate amounts the student may borrow;
- the effect that accepting the loan will have on the borrower's eligibility for other types of student aid;
- a statement of the total cumulative balance owed by the student to that school and an estimate of the monthly payment amount needed to repay that balance;
- options the borrower may have to consolidate or refinance;
- a brief notice about the Department of Defense program for repaying loans based on certain military service;
- a complete list of charges connected with making the loan, including whether those charges are deducted from the loan or whether the student must pay them separately; and
- a notice that the school will report the outstanding balance of the loan to a national credit bureau **at least annually**.

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

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

A school may not require a borrower to provide this additional contact information as a condition for receiving a subsequent Perkins Loan. However, the additional contact information gained during loan counseling could be valuable later for use in collection procedures, and it will help the school locate a student who leaves school without notice or who does not attend the exit interview. This

counseling may not be used to satisfy the requirement for an exit interview. (See chapter 5 of this volume.)

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### Promissory Note

34 CFR 674.31

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### Perkins MPNs

The Department has released the Perkins MPN, which must be used for all new loans for Perkins and former NDSL borrowers made on or after November 1, 2004. See Dear Colleague letters CB-03-11, CB-03-13, and CB-03-14 on IFAP ([www.ifap.ed.gov](http://www.ifap.ed.gov)) for the Perkins MPN and eMPN and implementation guidance on these forms.

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### Retention of records cite

34 CFR 674.19(e)(4)(iii)

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### Master Promissory Note defined

The following new definitions are in effect: A **Master Promissory Note (MPN)** is a promissory note under which the borrower may receive loans for a single award year or multiple award years.

The **making of a loan** occurs when the school makes the first disbursement of a loan to a student.

You must ensure that each Perkins Loan is supported by a legally enforceable promissory note.

You can no longer make a loan under an MPN:

- more than 10 years from the date the borrower signed the MPN or the date you received the MPN (schools can still disburse a remaining portion of a loan after this date);
- more than 12 months after the date the borrower signed the MPN, if you make no disbursement under that MPN;
- after the date you are notified by the borrower to stop using the MPN.

## PROMISSORY NOTE

The promissory note is the legally binding document that is evidence of a borrower's indebtedness to a school. The note includes information about the loan's interest rate, repayment terms, and minimum rates of repayment; deferment, forbearance, and cancellation provisions; credit-bureau reporting; late charges, attorney fees, collections costs, and consequences of default.

For loans made using the closed-end or open-end promissory notes, the borrower was required to sign the promissory note prior to the first disbursement of each Perkins Loan the borrower received. For loans made using the Perkins Master Promissory Note (MPN), the borrower is only required to sign the MPN once, prior to the first disbursement of the borrower's first Perkins Loan.

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

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

When the borrower has fully repaid the Perkins Loan, your school is no longer required to mark the original note "paid in full," have it certified by an official of the school, and give it back to the borrower. You may also now notify the borrower in writing that the loan is paid in full. The school must keep a copy of the note for at least three years after the date the loan was paid in full.

### *Master promissory note*

A school must use a promissory note that the Department has approved. In Dear Partner Letter CB-03-14, dated August 2003, the Department issued the Perkins Master Promissory Note (MPN). The MPN must be used for all new loans for Perkins and former NDSL borrowers made on or after November 1, 2004.

In Dear Colleague Letter CB-03-13, dated August 2003, the Department issued an electronic version of the Perkins Master Promissory Note (Perkins eMPN). Before implementing the eMPN, your school should review the Standards for Electronic Signatures in Electronic Loan Transactions published in Dear Colleague Letter



## **ELECTRONIC SIGNATURE STANDARDS: HIGHLIGHTS FOR eNOTES**

*(For complete instructions, see the Standards for Electronic Signatures in Electronic Loan Transactions (Standards) in Dear Partner Letter GEN-01-06, dated May 2001.)*

### **Why apply these standards?**

If your school's system for processing Perkins eNotes adheres to the standards and a court finds the loan legally unenforceable based solely on the processing of the electronic signature or related records, the Department will not consider your school liable for the loan and will not require your school to reimburse its Perkins Loan Fund.

If your school's system for processing Perkins eNotes does not adhere to the standards and a court finds the loan legally unenforceable based solely on the processing of the electronic signature or related records, the Department has the option to require your school to reimburse its Perkins Loan Fund.

### **Verify the borrower's identity. Verify the borrower's electronic signature.**

Collect at least the following identifying information: name, Social Security number, driver's license number, date of birth. Verify the borrower's identity by authenticating this data with an independent source such as a national commercial credit bureau, a commercial data service, a state motor vehicle agency, or a government database.

The electronic signature may be a PIN, a password, another unique credential, a biometric value unique to the borrower, such as a fingerprint or retinal pattern, or a signature image. A typed name must be paired with one of the above to constitute an electronic signature.

Ensure that the electronic signature is secure.

### **Get the borrower's consent. Make sure the borrower understands.**

Obtain consent from the borrower to use an electronic record. It must be clear that the borrower has consented to use a Perkins eNote in place of a paper promissory note. Require the borrower to confirm that he or she has the necessary hardware and software to view, print, download, or otherwise complete the electronic signature process. Keep a record showing that the borrower gave this consent prior to electronically signing the Perkins eNote.

Ensure that the borrower understands he or she is signing a promissory note. The borrower must click through all terms and conditions of the Perkins eNote and acknowledge that he has read the terms and conditions.

Notify the borrower when his or her electronic signature is about to be applied to the Perkins eNote. Give the borrower an opportunity to cancel the signature process.

After the borrower signs the Perkins eNote, provide the borrower with reasonable access to the full electronic record of the eNote.

GEN-01-06, dated May 2001. The standards are voluntary; however, adherence to the standards will provide your school some protection should a court find a loan unenforceable due to the processing of an electronic signature or related records (see boxed text on previous page for more information).

A Master Promissory Note is a promissory note under which the borrower may receive loans for a single award year or multiple award years. Because the MPN can be used to award Perkins Loans on a multi-year basis, there is no box for loan amount or loan period on the note. If you choose to use the MPN as a single award-year promissory note, the borrower must sign an MPN for each award year. The borrower signs a new Perkins MPN for each subsequent award year. When used as a multi-year note, the borrower signs the MPN only once, before the first disbursement of the borrower's first Perkins Loan.

The signed MPN covers all loans that the school makes to the borrower until the MPN expires. You may make Perkins Loans under an MPN for up to 10 years from the date the borrower signed the MPN. However, the first disbursement must be made within 12 months of the date the borrower signed the MPN. If no disbursements are made within that 12-month period, the borrower must sign another MPN before receiving a Perkins Loan. In addition, no further loans may be made under an MPN after the school receives written notice from the borrower requesting that the MPN no longer be used as the basis for additional loans.

Your school must provide the disclosure information described earlier in this chapter annually before the first disbursement of each Perkins Loan made under the MPN. In addition, you must notify the borrower of each disbursement of a Perkins Loan made under the MPN. This notification should inform the borrower of the amount disbursed, and provide the borrower with an opportunity to cancel the disbursement, or cancel the Perkins Loan. You will need to retain subsidiary records of disbursements and adjustment to satisfy the requirement that each Perkins Loan is supported by a legally enforceable promissory note. Actual disbursement records or student account records would serve this purpose.

### *Making Changes to the MPN*

You may not make changes to, deletions from, or additions to the prescribed language on the MPN. However, you may delete bracketed text. Of course, you may print information (name, address, and telephone number) identifying your school in Section B, Item 6. You may also use appropriate coding (for example, bar coding to reflect the source, type, or other identification system for filing or processing) in this area.

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**Limits to promissory note changes cite**

34 CFR 674.31(a)

You may print bar coding or coding identifiers, such as student ID number or loan number, in the side or bottom margins to meet

the requirements of your school's processing systems. You may not print these coding identifiers on the promissory note in a way that would alter the general layout of the note. You may also print in the lower margin of the note a reference to the type, for example: original, student copy, file copy.

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

You must print the original and borrower copies of the promissory notes with black ink on white paper. You may not change the typeface, point size, and general presentation of the form from the documents approved by the Department. However, you may print your school's identifying information located in Section B, Item 6 in another color to make your school's name and address more pronounced. It is preferable to print the MPN on two sheets of paper, front and back. However, you may print the MPN on four single-sided pages as well.

### Closed-end and Open-end Promissory Notes

The Perkins closed-end and open-end promissory notes expired on October 31, 2004. You **must** use the MPN for all loans made on or after November 1, 2004. Implementation guidance for the Perkins closed-end and open-end promissory notes was provided in Volume 5, Chapter 3, of the 2003-2004 FSA Handbook.

### *Minimum Monthly Payment Option*

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

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

## **MASTER PROMISSORY NOTE--QUESTIONS AND ANSWERS**

### **LOAN AMOUNT AND LOAN PERIOD**

Q. Why are there no boxes for the loan amount and loan period on the MPN?

A. The borrower only signs the MPN once, prior to disbursement of the borrower's first loan. Since the MPN can be used as either an annual or multi-year promissory note, it does not contain specific reference to the dollar amount of the loan to be disbursed, the disbursement dates, or the enrollment or award period covered by the loan.

Q. If a school chooses to use the MPN on an annual basis, can the school put boxes on the MPN for the award amount and the loan period?

A. No. The MPN is a federal form approved by the Office of Management and Budget (OMB). Schools may not add data elements to an OMB-approved form. Schools may only make minimal modifications to the MPN, as described in Dear Colleague Letter CB-03-14 and elsewhere in this chapter.

### **NOTIFICATIONS AND DISCLOSURES**

Q. Schools must provide loan amount and loan period information to the borrower through a means other than the MPN. Has a prototype been developed to meet this requirement?

A. The Department has not developed a prototype for providing loan amount or loan period information to borrowers. Schools may provide this information in any number of formats. This information may be provided in Award Letters or other written notifications and disclosures that schools are required to provide to the borrower.

Q. If a borrower's loan amount increases or decreases, should the school send the borrower a notification of the change in the amount borrowed?

A. Yes. Since the change in loan amount will not be reflected on the MPN, the school should notify the borrower, in writing, of the increase or decrease.

Q. What is the time frame for notifying borrowers that a disbursement has been made under the MPN? What information must be included in this notification?

A. When a school credits a Perkins Loan disbursement to a borrower's account, the school must notify the borrower of the date and amount of the disbursement, the borrower's right to cancel all or part of the disbursement, and the procedures for notifying the institution that the borrower wishes to cancel the loan or the loan disbursement. The school must send this notification to the borrower no earlier than 30 days before, and no later than 30 days after, crediting the borrower's account.

## QUESTIONS AND ANSWERS, CONTINUED

Q. How frequently should the statement of the total cumulative balance be provided to the borrower? Is this a statement of the total amount borrowed, or the total amount owed? What amount should be used if a borrower makes payments on the loan while still in school?

A. Each Perkins Loan received under an MPN is a separate and distinct loan. The disclosure information must be provided to the borrower annually, before the first disbursement of each new Perkins Loan awarded under the MPN. The disclosure information must include a statement of the total cumulative balance owed by the borrower to the school and an estimate of the monthly payment amount needed to repay the balance. In the case of a borrower who makes payments on the loan while still in school, the statement of cumulative balance owed by the borrower should be adjusted to reflect those payments.

### RECORD RETENTION

Q. Should a school retain a record of the date and amount of each disbursement in the borrower's file to document that the borrower received the loan?

A. Yes. Since this information is not shown on the MPN, the school should maintain documentation of the loan amount, award period, and disbursement dates as part of the borrower's records. Disbursement records or student account records showing a Perkins Loan credit would serve this purpose.

Q. Are third party servicers' records sufficient to satisfy a school's need to retain supporting records showing loan amount, award period, and disbursement dates?

A. Unless the servicer is performing loan origination and disbursement functions for the school, only school records definitively show that the borrower was enrolled, the borrower's account was credited from Perkins loan funds, and the date and amount of disbursements. With certain borrower challenges, third party servicer records may not be sufficient.

### OTHER TRANSITION ISSUES

Q. After implementing the MPN, can a school add disbursements from a previous Perkins or NDSL open-end promissory note, rather than close that previous note?

A. No. A school may not add disbursements from a previous Perkins or NDSL promissory note to an MPN. The school must close the previous open-end notes and make all subsequent loans on or after November 1, 2004 using the MPN.

### QUESTIONS AND ANSWERS (CONTINUED)

Q. Will the Department be issuing an NDSL MPN to replace the NDSL promissory notes that will expire on October 31, 2004?

A. No. Because there are so few NDSL borrowers who are likely to be enrolled, the Department has determined that it is unnecessary to continue to issue separate NDSL promissory notes. The bracketed sentence at the end of the repayment paragraph of the MPN provides for a \$30 minimum monthly payment for borrowers who have an outstanding balance on an NDSL. With the 1998 Amendments to the Higher Education Act, most of the remaining terms and conditions of an NDSL became the same as those of a Perkins Loan.

# Perkins Repayment, Forbearance, Deferment, and Cancellation

*Repayment terms vary substantially among Perkins Loans, National Direct Student Loans, and National Defense Student Loans. Schools may obtain software from third-party vendors that have automated many of the following requirements and calculations. The Federal Perkins Loan Program offers borrowers a variety of forbearance and deferment options. These options do not allow for capitalization of interest at the end of any forbearance or deferment period. A borrower may have all or part of his or her loan (including interest) canceled for engaging in teaching, public service, service in the Peace Corps or Americorps\*VISTA, or service in the military.*

## GRACE PERIODS

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

### *Initial Grace Periods*

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

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

For a borrower who is a member of the Armed Forces Reserve, the initial grace period does not include any period up to three years during which the borrower is called or ordered to active duty for more than 30 days, including the period necessary for the borrower to resume enrollment at the next available enrollment period. The period necessary for the borrower to resume enrollment at the next available enrollment period may not exceed

### Initial grace period definition

34 CFR 674.2

### Length of initial grace period

34 CFR 674.31(b)(2)(i)(B)

### Initial grace period example

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

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### Grace period delayed during active duty

34 CFR 674.31(b)(2)(i)(C)

### Initial grace periods for NDSLs and Defense Loans

Repayment of an NDSL made before October 1, 1980, begins **nine months** after the date that the borrower drops below half-time enrollment. Repayment of an NDSL made on or after October 1, 1980, begins **six months** after the date that the borrower drops below at least half-time enrollment.

Applicable Grace Periods	Perkins	NDSL on or after 10-1-80	NDSL before 10-1-80
<i>Initial Grace Period</i>	9 months	6 months	9 months
<i>Post-deferment Period</i>	6 months	6 months	6 months

12 months. The borrower must notify you of the beginning and end dates of his or her service, and the date he or she resumes enrollment. Borrowers who enroll in a different program when they return from active duty are entitled to the same grace period benefits. A borrower who is in a grace period when called or ordered to active duty is entitled to a new grace period upon conclusion of the excluded period.

### Post-deferment grace period definition cite

34 CFR 674.2

### Post-deferment Grace Periods

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

### Less-than-half-time grace period cite

34 CFR 674.32

Except for hardship deferments on loans made before July 1, 1993, all deferments for all loans made under the Federal Perkins Loan Program have post-deferment grace periods of six consecutive months.

### Less-than-half-time student/no loan grace period example

Paula starts school full time in September 2004. She does not have an outstanding Perkins Loan or NDSL. In January 2005, Paula drops to one-quarter time. In March 2005, she receives a Perkins Loan. Since Paula dropped below half-time enrollment **before** the Perkins Loan was made, Paula must begin repayment nine months after the date she dropped below half-time enrollment--October 2005.

### Initial Grace Period for Less-than-half-time Attendance

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

### Less-than-half-time student/outstanding loan grace period example

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

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

### Calculating the Grace Period

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

If a borrower has received loans with different grace periods (and different deferment provisions), the borrower must repay each loan according to the terms of its promissory note; the borrower must pay

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



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

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

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

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

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

the minimum monthly payment amount that applies to each loan that is not in a grace or deferment period.

## PREPAYMENT

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

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

## INTEREST ACCRUAL

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

### Prepayment cite

34 CFR 674.31(b)(4)

### Payment made during initial grace period example

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

### Simple interest accrual example

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

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

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

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

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

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

separate figures, adding accrued interest to the interest balance, *not* the principal balance.

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

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

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**Repayment plan cite**

34 CFR 674.33(a)

## ESTABLISHING A REPAYMENT PLAN

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

The repayment plan must be established and disclosed to the student before the student ceases to be enrolled at least half time.

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

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

### *Calculating the Payment Amount*

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

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**Payment amount cite**

34 CFR 674.33(a)

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**Calculating payment amount example**

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

$$\$2,500 \times .0319214 = \$79.80$$

## 10-Year Repayment Table of Constant Multipliers

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

$$\text{Principal} \times \text{Constant Multiplier} = \text{Payment Amount}$$

section, may require the borrower to pay a minimum monthly amount of \$40 instead.)

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

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

### MINIMUM MONTHLY REPAYMENT AMOUNTS

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

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

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

### *Conditions for Minimum Monthly Repayment*

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

- the promissory note includes a provision specifying a minimum monthly repayment of \$40 and the monthly repayment of principal and interest for a 10-year repayment

#### Minimum monthly repayment cite

34 CFR 674.33(b)

#### Minimum monthly repayment amount for older loans

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

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

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

<b>Monthly payment on loan #1</b>	
\$1,500 X .0106065 =	\$15.91
<b>+ Monthly payment on loan #2</b>	
\$1,000 X .0106065 =	\$10.61
<b>= Total payment per month</b>	\$26.52

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

<b>Monthly payment on loan #1</b>	
\$1,500 ÷ \$2,500 =	.600000
	X \$40
	\$24

<b>Monthly payment on loan #2</b>	
\$1,000 ÷ \$2,500 =	.400000
	X \$40
	\$16

<b>Monthly payment on loan #1</b>	\$24
<b>+ Monthly payment on loan #2</b>	\$16
<b>= Total payment per month</b>	\$40

**Two schools/minimum monthly payment amount example**

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

period (as calculated using a constant multiplier) would be less than \$40; or

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

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

**Multiple Loans at Same School**

If a borrower has multiple Perkins Loans from the same school, any of which include the minimum monthly payment provision, the school may require the borrower to make a minimum monthly payment if the borrower's total monthly payment on all the loans totals less than \$40<sup>2</sup>. If the school exercises this option, the school must divide each monthly payment among all the loans proportionate to the amount of principal advanced under each loan. If the borrower's total monthly payment equals or exceeds \$40 for all of the loans made at that school, the school may not exercise the minimum monthly payment on any loan.

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

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

**Loans from multiple schools**

A borrower may have received Perkins Loans from more than one school. If the borrower wants your school to coordinate minimum monthly payments with another school, he or she must request such coordination.

If the total of the monthly payments is at least equal to \$40, none of the lending schools may exercise the minimum monthly repayment requirement.

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

If the total monthly repayment is less than \$40 and each school exercises the minimum repayment option, the \$40 minimum

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

repayment is divided among the schools in proportion to the total amount of principal each has advanced.

If the borrower requests that your school coordinate minimum monthly payment amounts with another school, you should ask the borrower for:

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

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

### ***Hardship Payment Reduction***

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

## **PAYMENT PROCESSING**

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

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

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

## **INCENTIVE REPAYMENT PROGRAM**

To encourage repayment, a school may:

- reduce a loan's interest rate by up to 1% if the borrower makes 48 consecutive monthly payments;
- discount by up to 5% the balance a borrower owes on a loan if he or she pays the loan in full before the end of the repayment period; or

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### **Payment processing cite**

34 CFR 674.33(a)

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### **Incentive repayment program cite**

34 CFR 674.33(f)

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

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

- with the Secretary's approval, establish any other repayment incentive options that reduce default and replenish student loan funds.

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

### ESTABLISHING REPAYMENT DATES

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

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

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

## Low-Income Individual Maximum 2005 Income Levels for 2006-2007 Award Year

(derived from Income Protection Allowances published in the May 26, 2005 *Federal Register*)

<i>Number of Family Members (including student)</i>	1	2	3	4	5	6
<i>Maximum 2005 Income Level</i>	\$9,990	\$18,038	\$22,463	\$27,750	\$32,738	\$38,300

**NOTE:** For families of more than 6, add \$4,325 for each additional family member.

period expires May 18, so the first installment payment on that loan is due August 19.

For collection and bookkeeping purposes, a fixed repayment date is preferred. Otherwise, if the borrower is entitled to a deferment, the school may have problems computing payments due. Once the payment date is established, the borrower will owe principal and interest for any portion of a scheduled installment period not covered by a deferment. However, if the borrower is in deferment on a due date, any amounts owed are carried over and paid on the first due date on which the borrower is out of deferment.

### **Extending the Repayment Period for Hardship and Low-Income Individuals**

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

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

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

- The school may require the borrower to pay a reduced amount for a limited time and then later increase the

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

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

payment amount so that the borrower catches up on payments. For example, a school reduces the payment amount to \$10 per month for six months and then increases it to \$50 per month until the borrower catches up. The repayment period does not have to be extended; or

- The school may allow the borrower to pay \$10 per month for a year and then resume normal payments. This type of adjustment extends the repayment period.

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**Death and disability discharge cite**

34 CFR 674.61, Dear Colleague Letter CB-02-08.

## **DISCHARGING PERKINS LOANS**

### ***Due to Death or Total and Permanent Disability***

You must discharge the remaining balance of any Perkins Loan, NDSL, or Defense Loan if the borrower dies or becomes totally and permanently disabled. Your school does not receive reimbursement for discharges due to death or disability. See Dear Colleague Letters CB-02-8, CB-02-10, and CB-02-18 for total and permanent disability discharge forms and procedures.

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

Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon other reliable documentation supporting the discharge request.

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

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

The following procedures became effective on July 1, 2002:

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

If the Department makes an initial determination that the borrower is eligible for discharge, the Department will place the loan



in a conditional discharge status for up to three years after the date the borrower became totally and permanently disabled as certified by the borrower's physician. A loan placed in conditional discharge status is not considered past due or in default unless the loan was past due or in default at the time the conditional discharge was granted.

If your school receives payments from a borrower on a loan that is in conditional discharge status, you must forward these payments to the Department and notify the borrower that there is no need to make payments on the loan while it is in conditional discharge status. If the Department grants final discharge to the borrower, your school must refund any payments the borrower made after the certified disability date and before the account was assigned to the Department. The Department will refund any payments received after the assignment.

### *Closed School Discharge*

Your school must assign to Federal Student Aid (FSA) Collections all its outstanding Perkins and NDSL loans if it is closing (see Chapter 1 of this volume for assignment procedure).

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

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

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

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

### *Bankruptcy Discharge*

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

If a school receives notice that a borrower has filed for bankruptcy protection, it must immediately stop collection efforts (outside the bankruptcy proceeding itself). If the borrower has filed under Chapter

For additional information on assigning loans for discharge contact:

**Disability Discharge Loan  
Servicing Center**

Phone: 1-888-869-4169

TDD: 1-888-636-6401

e-mail: [disability\\_discharge@afsa.com](mailto:disability_discharge@afsa.com).

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**Closed school discharge cite**

34 CFR 674.33(g)

12 or 13 of the Bankruptcy Code, the school must also suspend collection efforts against any endorser.

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

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### Bankruptcy laws

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

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

### Responding to complaint for determination of dischargeability

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

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

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

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

## Procedures for responding to proposed Chapter 13 repayment plan

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

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

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

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

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

After a borrower's proposed repayment plan is confirmed by the court, the school must monitor the borrower's compliance with the

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

### **Resuming/terminating billing and collection**

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

### **Bankruptcies filed before October 8, 1998**

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

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

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

### **Bankruptcy and student eligibility**

As stated earlier, a borrower is no longer required to establish eligibility for a new student loan by agreeing to repay a loan discharged in bankruptcy. Section 525(c) of the Bankruptcy Code provides that a student may not be denied student financial assistance solely on the basis of a bankruptcy filing or failure to pay a debt

dischargeable in bankruptcy. If a student has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been determined by a court of law to be dischargeable in bankruptcy, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of a future loan from the Federal Perkins Loan Program or other student loan programs. However, schools may continue to consider the student's post-bankruptcy credit history in determining willingness to repay the loan.

## FORBEARANCE

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

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

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

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

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

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

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### Forbearance

34 CFR 674.33(d)

## Hardship

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

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

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

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

## DEFERMENT

### *Deferment Procedures*

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

Borrowers are no longer required to request deferments in writing. However, a borrower who requests deferment must provide the school with all the information and documents the school requires by the school's deadline. (The Department does **not** approve or supply deferment forms.) Borrowers must immediately report any change in their deferment status to lending schools. The borrower must request deferment *unless* the borrower is engaged in service for which a borrower may qualify for loan cancellation. (See the discussion of Concurrent Deferment later in this chapter.)

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#### Deferment procedures

34 CFR 674.38(a)

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#### Concurrent deferment

34 CFR 674.34(c)

34 CFR 674.52(d)

If a borrower is currently in deferment, the school must reaffirm continued eligibility for deferment on at least an annual basis. However, if the borrower is currently in economic hardship deferment for service in the Peace Corps, the school must grant deferment for the full term of the borrower's service, not to exceed three years or for the remaining period of economic hardship deferment eligibility, if it is less than the remaining period of service. Schools may not include periods of deferment in the 10-year repayment period.

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

## Deferments for all Perkins Loans

### In-school

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

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

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

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

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

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

### Graduate fellowship

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

To receive deferment for enrollment in a graduate fellowship program, the borrower must provide certification that he or she is

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#### In-school deferment cite

34 CFR 674.34(b)(1)(i)

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#### Enrollment verification

34 CFR 674.38(a)(2)

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### Graduate fellowship and rehabilitation training deferments

- 34 CFR 674.34(b)(1)(ii)
- 34 CFR 674.34(b)(1)(iii)
- 34 CFR 674.34(b)(1)(iv)

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### Approval for graduate fellowship and rehabilitation training programs

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

engaged in full-time study in an approved graduate fellowship program (or has been accepted by the program).

### Rehabilitation training

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

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

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

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

### Seeking full-time employment

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

### Economic hardship

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

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

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### Seeking employment deferment cite

- 34 CFR 674.34(d)

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### Economic hardship deferment cite

- 34 CFR 674.34(e)



3. is working full time and is earning a total monthly gross income that does not exceed \$1,100 (\$1,375 for Alaska, \$1,265 for Hawaii) (see boxed elements);
4. is not receiving total monthly gross income that is more than twice the amount in (3) above and that income minus an amount equal to the borrower's monthly payments on federal postsecondary education loans does not exceed the amount specified in (3) above;
5. is working full time and has a federal educational debt burden that is 20% or more of the borrower's total monthly

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

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

the monthly gross income of a minimum wage earner;

OR

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

**Monthly Gross Income of Minimum Wage Earner**

The current minimum wage is available at <http://www.dol.gov/dol/topic/wages/minimumwage.htm>.

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

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

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

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

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

For 2005, the monthly gross income for a family of two at the poverty line is:

All states and the District of Columbia (except Alaska and Hawaii)....	\$1,100
Alaska.....	\$1,375
Hawaii.....	\$1,265

gross income and the borrower's total monthly gross income minus such burden is less than 220% of the amount specified in (3) above; or

6. is serving as a volunteer in the Peace Corps.

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

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

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

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

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### Proportional monthly amount example

Eric pays \$90 every three months on his Perkins Loan. When he applies for an economic hardship deferment, Rouge College determines his eligibility using a proportional monthly payment amount of \$30.

If the repayment schedule for the loan is **10 years or less**, use the actual monthly payment amount. If the repayment schedule for the loan is **more than 10 years**, use a monthly payment amount that would have been due for a 10-year repayment schedule. If the borrower's payments are due less frequently than monthly, use the payment amount that is proportional for a month.

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

## Concurrent deferment

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

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

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

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

## Deferments for Loans Made Before July 1, 1993

### Parenting deferments

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

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

### Hardship deferments

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

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#### Concurrent deferment cites

34 CFR 674.34(c)  
34 CFR 674.52(d)

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#### Hardship deferments cites

34 CFR 674.35(g)  
34 CFR 674.36(e)  
34 CFR 674.37(e)

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

Interest will continue to accrue during the hardship deferment.

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

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**Exclusive deferments list cites**

34 CFR 674.35(c)

34 CFR 674.36(c)

***Deferment Exclusive to Perkins Loans Made Before July 1, 1993, and NDSLs Made Between October 1, 1980, and July 1, 1993.***

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

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

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

***Service Comparable to Peace Corps/Americorps\*VISTA Volunteer***

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

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**Peace corps/Americorps\*VISTA deferment cites**

34 CFR 674.35(c)(5)

34 CFR 674.36(c)(4)

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

### Temporary Total Disability Deferment

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

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

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

### Internship/Residency Deferment

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

#### Temporary total disability deferment cites

34 CFR 674.35(c)(6)  
34 CFR 674.36(c)(5)

#### Internship deferment cites

34 CFR 674.35(d)  
34 CFR 674.36(d)

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

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

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

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

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

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

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### Deferments Exclusive to Loans Made Before October 1, 1980

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

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### Deferment and default cite

34 CFR 674.38(b)

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

### Deferment and Default

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

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

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

**A school is not required to grant deferments on loans in default.**

However, if a school does so, it is expected to calculate past-due accrued interest. If a school believes this is too burdensome, it may deny deferments on defaulted loans.

### *Deferment vs. In-School Enrollment Status*

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

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

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

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**In-school status cite**

34 CFR 674.38(c)

## PERKINS CANCELLATION

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

### *Application for Cancellation*

The following cancellation application procedures apply to any loan under this program.

The borrower applies for cancellation of his or her loan by obtaining the appropriate cancellation form from the business or student loan office of the school that made the loan (or from the school's billing service if it uses one). The borrower submits the form to the school, along with any supporting documentation the school requests, by the deadline the school establishes. The Department does not approve or supply cancellation forms. Schools determine, based on the borrower's documentation, whether the borrower is entitled to have any portion of his or her loans canceled. This responsibility cannot be delegated. For information on documentation, see the appropriate cancellation category in this section.

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

### *Cancellation Rates*

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

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

A "year of service" consists of 12 consecutive months of service. (See exceptions for teacher cancellation later in this chapter.) For cancellation rates for Head Start, military, and volunteer service, please see the corresponding sections in this chapter.

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#### Cancellation procedures

34 CFR 674.52



## Concurrent Deferment

Schools must automatically defer loans during periods of service for which schools also grant loan cancellation. Borrowers do not need to apply for these automatic deferments.

## Payment Refund

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

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### Payment refund cite

34 CFR 674.62(b)

## CANCELLATION RESTRICTIONS

### Prior Service

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

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### Prior service cite

34 CFR 674.62(a)

### Defaulted Loans

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

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

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### Defaulted loans cite

34 CFR 674.52(c)

### National and Community Service Act of 1990

Schools may not grant cancellation of a Perkins Loan or National Direct Student Loan (NDSL) to a borrower who has received a national service education award for volunteer service with Americorps (Subtitle D of Title I of the National and Community Service Act of 1990).

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### National community service cite

34 CFR 674.52(e)

### Teacher Cancellation

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

- teacher in a school serving students from low-income families;
- **special-education** teacher, including teachers of **infants, toddlers, children, or youth with disabilities**; or
- teacher in the fields of **mathematics, science, foreign languages, or bilingual education**, or in any other **field of**

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### Teacher cancellation cite

34 CFR 674.53

**expertise** that is determined by a state education agency to have a shortage of qualified teachers in that state.

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

### Who is a teacher?

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

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

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

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

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#### Teacher definition cite

34 CFR 674.51(q)

## Service Cancellations

### Teaching Cancellations

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

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

### Other Service Cancellations

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

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

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

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

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**Teaching both children and adults**

34 CFR 674.53(f)

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

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

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

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

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

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

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

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

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

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

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**Academic year definition**

34 CFR 674.51(a)

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**Incomplete year due to illness or pregnancy**

34 CFR 674.52(b)(2)

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**Teaching in multiple schools simultaneously**

34 CFR 674.52(b)(1)(i)

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

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

A borrower may receive teacher cancellation for services performed in a private elementary or secondary school or academy, if the private school or academy has established its nonprofit status with the Internal Revenue Service (IRS) and if the school or academy is providing elementary or secondary education according to state law. The school or academy does not necessarily need to be accredited for a borrower teaching there to qualify for teacher cancellation.

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

A borrower may receive teacher cancellation for teaching service performed in a preschool or prekindergarten program only if the state considers the program to be a part of its elementary education program. A low-income-school-directory designation that includes prekindergarten or kindergarten does not suffice for a state determination of program eligibility. The school must check with the state superintendent of public instruction to determine whether these programs are part of the state elementary education program.

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

### *Cancellation for teaching in low-income schools*

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

The Directory lists, on a state-by-state and territory-by-territory basis, the schools in which a borrower may teach during the school year to qualify for deferment and cancellation benefits. The Directory is currently available in electronic format at: <http://www.studentaid.gov/PORTALSWebApp/english/teachercancel>

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#### **Low-income schools**

34 CFR 674.53(a)

## Low-Income Schools: Developing the Directory

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

- 1) it is in a school district that qualifies for federal funding based on the large number of low-income families in the district; and
- 2) more than 30 percent of the school's enrollment is made up of children from low-income families.

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

Contact Person: Pamela Wills	U.S. Department of Education
	Campus-Based Operations
	UCP, Sixth Floor
	830 First Street, NE
	Washington, DC 20202-5453

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### BIA schools

34 CFR 674.53(a)(5)

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

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

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### Losing low-income status

34 CFR 674.51(q)(6)

### *Cancellation for teaching in special education*

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

- speech and language pathology and audiology;
- physical therapy;
- occupational therapy;
- psychological and counseling services; or
- recreational therapy.

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### Special education

34 CFR 674.51(q)(3)

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

For a borrower to be considered as teaching in a field of expertise that has been identified by a state education agency to have a shortage of teachers, the majority of classes taught must be in that field of expertise.

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

### *Nurse or Medical Technician Cancellation*

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

### *Child or Family Services Cancellation*

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

To receive loan cancellation for being employed at a child or family service agency, a borrower must be providing services only to high-risk children who are from low-income communities. The borrower must provide services directly and exclusively to high-risk children from low-income communities or must supervise employees who provide services directly and exclusively to such children. The borrower may also be providing services to adults, but these adults must be members of the families of the children for whom services are provided. The services provided to adults must be secondary to the services provided to the high-risk children.

The types of services a borrower may provide to qualify for a child or family service cancellation include child care and child development services, health, mental health and psychological services, as well as social services. The Department has determined that an elementary or secondary school system or a hospital is not an eligible employing agency.

When reviewing child or family service cancellation requests, Perkins schools and their servicers should refer to Dear Colleague Letter GEN-5-15, which provides a more detailed discussion of the eligibility requirements for child or family service cancellations.

### *Early Intervention Cancellation*

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

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#### **Field of expertise**

34 CFR 674.51(f)

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#### **Nurse or medical technician**

34 CFR 674.56(a)

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#### **Child or family services agency eligibility cite**

34 CFR 674.56(b)

GEN-05-15

Sec. 465(a)(2)(I) of the HEA

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#### **Early intervention**

34 CFR 674.56(c)

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**Head Start cite**

34 CFR 674.58

### ***Head Start Cancellation***

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

A full-time staff member is someone who is regularly employed in a full-time professional capacity to carry out the educational part of a Head Start Program. The program must operate for a full academic year, or its equivalent, and the borrower's salary may not be more than that of a comparable employee working in the local educational agency. An authorized official of the Head Start Program must sign the borrower's cancellation form to certify the borrower's service. The cancellation rate is 15% of the original principal loan amount—plus the interest that accrued during the year—for each complete school year.

### ***Law Enforcement or Corrections Officer Cancellation***

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**Law enforcement cite**

34 CFR 674.57

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

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

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

Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible. However, in recognition of the fact that the activities of many divisions and bureaus within local, state, and federal agencies pertain to crime prevention, control, or reduction, or to the enforcement of criminal law, the Department has determined that a sub-unit within a larger, non-law enforcement agency may qualify as a law enforcement agency for purposes of a law enforcement cancellation.

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



responsibilities are unique to the criminal justice system and are essential in the performance of the agency's primary mission. The agency must be able to document the employee's functions.

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

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

### **Military Service Cancellation**

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

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

The cancellation rate of 12.5% of the original principal loan amount is for each **complete** year of service. Service for less than a complete year or a fraction of a year beyond a complete year does not qualify. A complete year of service is 12 consecutive months. The Department of Defense does not prorate or reduce a hostile fire/imminent danger pay area payment if the service in the hostile fire/imminent danger pay area is for a period of time less than a full month. If a member of the U.S. Armed forces is on active duty in a hostile fire/imminent danger pay area for any part of a month, the service member qualifies for the full payment of hostile fire/imminent danger pay for that month. Therefore, the Department of Education has determined that if a borrower is on active duty in a hostile fire/imminent danger pay area for any part of a month, that

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#### **Military service**

34 CFR 674.59

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#### **Cancellations for Defense Loans**

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

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#### **DoD Hostile Fire/Imminent Danger pay areas list**

The Department of Defense maintains an updated listing of hostile fire/imminent danger pay areas at the following URL: <http://www.dod.mil/comptroller/fmr/07a/index.html>

month counts towards the borrower's eligibility for a military cancellation.

### *Volunteer Service Cancellation*

Schools must cancel up to 70% of a Perkins Loan if the borrower has served as a Peace Corps or Americorps\*VISTA (under Title I, Part A of the Domestic Volunteer Service Act of 1973) volunteer. An authorized official of the Peace Corps or Americorps\*VISTA program must sign the borrower's cancellation form to certify the borrower's service. Americorps volunteers do not qualify for this cancellation unless their volunteer service is with Americorps\*VISTA. An Americorps\*VISTA volunteer may only qualify for this cancellation if the Americorps\*VISTA volunteer elects not to receive a national service education award for his or her volunteer service. The Americorps\*VISTA volunteer must provide appropriate documentation showing that the volunteer has declined the Americorps national service education award. Schools apply cancellation for volunteer service in the following increments:

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

### *Reimbursing Amounts Cancelled*

For Perkins Loans and NDSLs, the Department will reimburse each school every award year for the principal and interest canceled from its Perkins Loan Fund for all of the cancellation provisions except for death, total and permanent disability, bankruptcy, and closed school discharge. The school must deposit in its fund the amount reimbursed. Note that interest does not accrue on any loan during the period that a borrower is performing service to qualify for cancellation benefits. Schools are not required to deposit reimbursements for loans made prior to July 1, 1972, into the Perkins Loan Fund. These reimbursements are considered institutional funds. For more information and a full Q&A on reimbursing amounts cancelled, see Dear Colleague Letter CB-05-08.

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#### **Volunteer service cite**

34 CFR 674.60

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#### **Cancellation reimbursement**

34 CFR 674.63(b)

DCL CB-05-08

## **U.S. ARMY LOAN REPAYMENT PROGRAM**

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

## DEFINITIONS

The following are definitions of terms used in this chapter:

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### Definitions cite

34 CFR 674.51

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

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

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

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

**High-risk children.** Individuals under the age of 21 who are low-income 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.

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

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

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

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

**Medical Technician.** An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate state agency in the state in which he or she provides health care services; an allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system. You can find a list of accredited allied health professions at [<http://www.ama-assn.org/ama/pub/category/10481.html>]. Note that *this is not a complete list of all allied health professions*.

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

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

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

- are provided under public supervision;
- are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;
- are designed to meet the developmental needs of an infant or toddler with a disability in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development;
- meet the standards of the state in which they are provided;
- are provided by qualified personnel, including: special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians;
- to the maximum extent appropriate, are provided in natural environments, including the home, and

community settings in which children without disabilities participate; and

- are provided in conformity with an individualized family service plan adopted in accordance with section 636 of the Individuals with Disabilities Education Act.

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

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



# Perkins Billing, Collection, and Default

*Your school must follow the Due Diligence requirements of Subpart C of the Perkins regulation (34 CFR 674.41-50). You must afford the borrower maximum opportunity to repay a Federal Perkins Loan. Specific steps the school must take include (but are not limited to) billing the borrower, sending overdue notices, and conducting address searches if the borrower cannot be located. If billing procedures fail, a school must take more aggressive collection steps such as hiring a collection firm and/or litigating. Default in the Federal Perkins Loan Program is defined as “the failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.”*

## PERKINS COLLECTION REQUIREMENTS

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

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

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

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

## EXIT INTERVIEWS

Contact with the borrower becomes even more important as the borrower’s last day of attendance approaches. Your school must conduct exit counseling with borrowers either in person, by audiovisual presentation, or by interactive electronic means. (If you conduct exit counseling through interactive electronic means, you must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the

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### General requirements

#### General

34 CFR 674.41(a)

#### Coordination of information

34 CFR 674.41(b)

#### Exit interview

34 CFR 674.42(b)

## FSA Ombudsman

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

Office of the Ombudsman	Toll-free:	1 (877) 557-2575
U.S. Dept. of Education		1 (202) 377-3800
830 First St NE	Fax:	1 (202) 275-0549
Mailstop #5144		
Washington, DC 20202-5144		<a href="http://fsahelp.ed.gov">http://fsahelp.ed.gov</a>

exit counseling.) Schools must conduct this counseling shortly before the student graduates or drops below half-time enrollment (if known in advance). If individual interviews are not possible, group interviews are acceptable. Your school may employ third party servicers to provide Perkins Loans borrowers with exit counseling.

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

## NSLDS

### Web site

<http://www.nsls.ed.gov>

### Phone number

1 (800) 4FEDAID

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

- the name and address of the borrower's expected employer;
- debt-management strategies that would facilitate repayment;
- the availability of Title IV loan information on the National Student Loan Database System (NSLDS); and
- how to contact the FSA Ombudsman's office and an explanation of the services this office provides.

The financial aid counselor must emphasize the seriousness and importance of the repayment obligation the borrower is assuming, describing the likely consequences of default, including adverse credit reports, litigation, and referral to a collection agency. The counselor must further emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the



program, is unable to obtain employment upon completion, or is otherwise dissatisfied with the school's educational or other services.

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

Finally, schools must document all exit interviews.

## DISCLOSURE OF REPAYMENT INFORMATION

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

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

If your school exercises the minimum monthly payment option, you must inform the borrower that if he or she wants your school to coordinate payments with another school, he or she must request such coordination.

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

If a borrower enters the repayment period without the school's knowledge, the school must provide the required disclosures to the

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### Disclosure of repayment information

34 CFR 674.42(a)

borrower in writing immediately upon discovering that the borrower has entered the repayment period.

## CONTACT DURING GRACE PERIODS

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

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

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### Grace period contact

34 CFR 674.42(c)

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

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

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

## BILLING PROCEDURES AND OVERDUE PAYMENTS

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

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

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

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

### Late Charges

The assessment of late charges on an overdue Perkins Loan borrower is now optional. However, a school that adopts a policy of assessing late charges must impose them on all borrowers with overdue payments. The charge is based either on the actual costs the school incurs in taking steps to obtain the overdue amount or on average costs incurred in similar attempts with other borrowers. The charge may not exceed 20% of the installment payment most recently due.\*

If your school assesses a late charge, it must also impose a late charge if a borrower's payment is overdue and the borrower has not filed a complete request for forbearance, deferment, or cancellation on time. (To be complete, the request must contain enough information for you to confirm the borrower's eligibility.) If a school opts to charge late fees, the school may charge late fees only during the billing process; a school may not charge late fees once the school begins collections procedures.

You may add the penalty or late charge to the principal amount of the loan as of the first day the payment was due. Alternatively, you may

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### Billing procedures

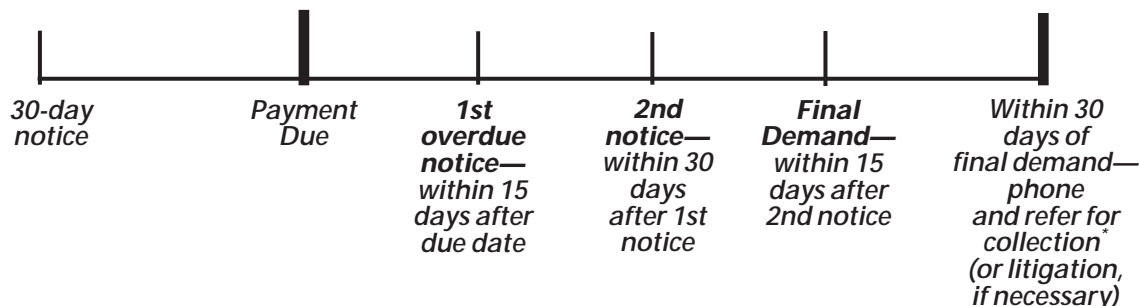
34 CFR 674.43

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### Late charges

34 CFR 674.43(b)(2)

## Billing Procedures



\* The school can use the services of the Department's Default Reduction Assistance Project (DRAP) before the loan goes to a collection firm; DRAP is discussed in chapter 5 of this Volume.

### Optional penalty charge for periods of enrollment beginning before 1/1/86

34 CFR 674.31(b)(5)(ii)

34 CFR 674 Appendix E

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

### Overdue notices

34 CFR 674.43(b)

34 CFR 674.43(c)

include the charge with the next payment that is scheduled after the date you notify the borrower that the charge must be paid in full by the next payment due date. You must inform the borrower of the late charge, preferably in the first overdue payment notice.

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

### Notices of Overdue Payments

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

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

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

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

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

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

### Contacting the Borrower by Telephone

If the borrower does not respond to the final demand letter within 30 days, you must try to contact him or her by telephone before

beginning collection procedures. As telephone contact is often very effective in getting the borrower to begin repayment, one call may avoid the more costly procedures of collection.

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

### **Contacting the Endorser—Loans Before July 23, 1992**

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

### **Loan Acceleration**

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

### **Address Searches**

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

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

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#### **Telephone contact**

34 CFR 674.43(f)

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#### **Loan acceleration**

34 CFR 674.43(e)

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#### **Address search**

34 CFR 674.44

## IRS/ED Skip-tracing Program

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

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

General questions should be directed to the Campus-Based Call Center at 1-877-801-7168. Schools may also wish to review Dear Partner Letter CB-02-16, November 2002, for more information about the IRS/ED Skip-tracing Program.

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

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

## DEFAULT AND COLLECTION PROCEDURES

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

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

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### Collection procedures

34 CFR 674.45

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### Ombudsman information

34 CFR 674.45(h)

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### Credit bureau reporting

34 CFR 674.45(a)(1)

34 CFR 674.45(b)

## *Credit Bureau Reporting*

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

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

Trans Union Corporation	(1-800-888-4213)
Experian (formerly TRW)	(1-888-397-3742)
Equifax	(1-888-202-4025)

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

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

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

## *Efforts to Collect*

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

If the school's personnel or the collection firm cannot convert the account to regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, or

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## Efforts to collect cites

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### First effort

34 CFR 674.45(a)(2)

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### Litigation or second effort

34 CFR 674.45(c)

cancellation), the school has two options—either to litigate or to make a second effort to collect.

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

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

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

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

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

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

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## Annual efforts

34 CFR 674.45(d)

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## Ceasing collections

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### Ceasing collections

34 CFR 674.47(g)

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### Account write-off

34 CFR 674.47(h)

## *Ceasing Collection*

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

Your school may write off an account with a balance of **less than \$25.00** (including outstanding principal, accrued interest, collection costs, and late charges). Your school may write off an account with a balance of **less than \$50**, if your school appropriately billed the borrower for at least two years. If you write off an account, the borrower is relieved of all payment obligations and you must deduct the amount of the account from the Perkins Loan Fund. If you receive



a payment from a borrower after you have written off the loan, you must deposit that payment into the Fund.

### *Alternatives to Litigation*

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

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#### **Collection costs waiver**

34 CFR 674.47(d)

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

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#### **Compromise**

34 CFR 674.33(e)

A borrower may rehabilitate a defaulted Perkins Loan by making 12 consecutive on-time payments. A rehabilitated loan is returned to regular repayment status. (See Rehabilitation later in this chapter.)

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

#### **Consolidating Defaulted Perkins Loans**

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

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

**Litigation**

34 CFR 674.46

***Litigation***

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

- the total amount owed, including outstanding principal, interest, collection costs, and late charges, on all the borrower's Perkins Loans and NDSLs at the school is more than \$500;
- the borrower can be located and served with process;
- the borrower either has enough assets attachable under state law to cover a major portion of the debt or enough income that can be garnished under state law to satisfy a major portion of the debt over a reasonable period of time (defining a "reasonable period of time" is left to the school);
- the borrower does not have a defense that will bar judgment for the school; and
- the expected cost of litigation (including attorneys' fees) does not exceed the amount that can be recovered from the borrower.

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

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

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

Your school may assign the account to the Department for collection if the amount outstanding is \$25 or more (including principal, interest, collection costs, and late charges) and your school

cannot collect a payment after following all collection procedures (including litigation, if required).

## BILLING AND COLLECTION COSTS

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

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

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

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

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

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

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

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

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### Charging costs to fund

34 CFR 674.47

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### Collection costs for loans made from 1981 through 1986

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

Fund for collection costs initially charged to the Fund but subsequently paid by the borrower.

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

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

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

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

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

### ***Assessing and Documenting Costs***

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

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

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

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

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### Assessing costs

34 CFR 674.45(e)

## USING BILLING AND COLLECTION FIRMS

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

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

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### Billing and collection firms

34 CFR 674.48

### *Account Protection*

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

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

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

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

or comparable insurance **that names your school as the beneficiary** and is bonded or insured for an amount not less than the amount of funds the school can reasonably expect to be repaid during that two-month period.

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

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

## DEFAULT STATUS AND PERKINS ELIGIBILITY

### *Satisfactory repayment arrangements*

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

### *Loans with judgments*

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

### *Previously Defaulted Loans Discharged for School Closure*

A Perkins Loan made on or after January 1, 1986, may be discharged if the borrower is unable to complete his or her program of study due to the closure of the school that made the loan. A defaulted borrower whose loan is discharged under this closed school provision is eligible for additional federal student aid, provided that he or she meets all other eligibility criteria. (Schools that close must assign all Perkins Loans to FSA Collections. FSA Collections, or the school, if the school still holds the loan, must report to credit bureaus that the loan has been discharged.)

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#### Closed school discharge

34 CFR 674.33(g)

## Perkins Loan Rehabilitation

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

Borrowers may not rehabilitate loans on which the holder has obtained a judgment. (If, prior to November 1, 2002, you offered rehabilitation to a borrower for loans with judgments, you should honor the rehabilitation agreement. You do not need to offer rehabilitation again if the borrower misses any of the required payments.) However, your school may enter into an agreement with the borrower that provides the borrower with some of the benefits of rehabilitation. For example, your school could promise to vacate the current judgment and request the removal of the default from the borrower's credit after the borrower makes 12 consecutive payments and signs a new promissory note.

The rehabilitation payments should be sufficient to satisfy the outstanding balance on the loan within a 10-year repayment period. A school may not establish a loan rehabilitation policy that requires defaulted Perkins Loan borrowers to pay the full outstanding balance of the loan within the 12-month rehabilitation period, if such payments would create a hardship for the borrower. In most cases, such a policy would require a borrower to make excessively high monthly payments, and would, in effect, deny the borrower access to a statutorily mandated benefit of the Perkins Loan Program.

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

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

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

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

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### Rehabilitation

34 CFR 674.39

## PERKINS ASSIGNMENT

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

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

You may not assign a loan to FSA Collections if:

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

See chapter 1 for assignment of non-defaulted loans (for example if your school is closing or is withdrawing from the Perkins program).

### *Required Documentation*

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

- one original and one photocopy of the assignment form—ED Form 553, provided by the Department and completed by the school (the form must include the borrower's Social Security number);
- the original promissory note or a certified copy of the original note;
- a copy of the repayment schedule and a complete statement of the payment history;
- copies of all approved requests for deferment and cancellation;
- a copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan;
- documentation that the school has withdrawn the loan from any firm that it employed for address search, billing,

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#### Assignment

34 CFR 674.50

Dear Colleague Letter CB-02-05

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#### Assignment address

A school should mail assignments to:

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



collection, or litigation services and has notified that firm to cease collection activity on the loans;

- copies of all pleadings filed or received by the school on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable;
- a certified copy of any judgment order entered on the loan; and
- documentation that the school has complied with all of the due diligence requirements if the school has a cohort default rate that is equal to or greater than 20% as of June 30 of the second year preceding the submission period.

### *Terms of Assignment*

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

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

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

## DEFAULT REDUCTION ASSISTANCE PROGRAM

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

To participate in DRAP, you no longer need to use special DRAP software, nor the Student Aid Internet Gateway (SAIG). The new DRAP process will be an entirely web-based process conducted at the new eCampus-Based website ([www.cbfsap.ed.gov](http://www.cbfsap.ed.gov)). Select the “DRAP” link on the top navigation bar to begin.

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### Default Reduction Assistance Program

Dear Colleague Letter CB-05-11

General questions about DRAP should be directed to the Campus-Based Call Center at 1-877-801-7168 Monday through Friday, 8 AM to 8 PM EST.

**Perkins cohort default rate Booklet**

http://ifap.ed.gov/chpmaterials/0304OrangeBook.html

**Calculating cohort default rate**

34 CFR 674.5(b)

**Calculating cohort default rate example**

During the 2001-2002 award year, more than 30 borrowers entered repayment at Justinian University. For the Fiscal Operations Report for 2002-2003 and Application to Participate for 2004-2005 (FISAP), Justinian University calculates its cohort default rate in Section D of the FISAP.

DENOMINATOR: Justinian University determines that **500** students entered repayment in the 2001-2002 award year.

NUMERATOR: Justinian University determines that, of the 500 students who entered repayment in the 2001-2002 award year, **10** defaulted by the end of the 2002-2003 award year (June 30, 2003).

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

$$\text{Cohort default rate} = \frac{10}{500} \times 100 = 2\%$$

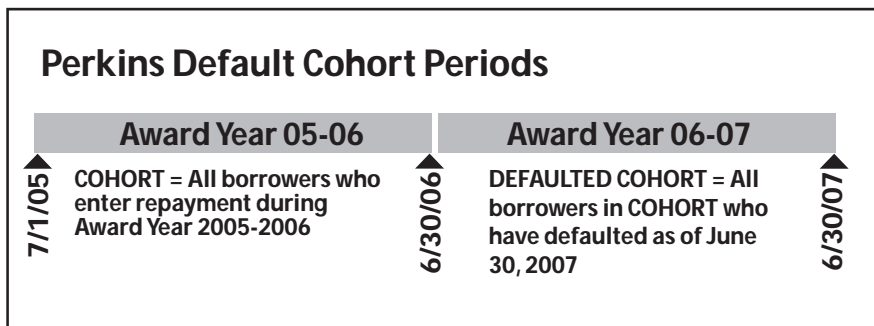
**Loans included in the cohort default rate**

34 CFR 674.5(c)

**240/270-day delinquency example**

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

As DRAP is intended to get the borrower back into repayment **before** the account goes to a collection firm, this service should **not** be requested once a collection agency is involved. DRAP service is usually provided during the 30-day period during which a school is awaiting response to the final demand letter.



**PERKINS COHORT DEFAULT RATES**

*Defining and Calculating the Cohort Default Rate*

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

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

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

*Borrowers Entering Repayment*

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

*Borrowers in Default*

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

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

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

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

### **Loan not Included in Cohort Default Rate**

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

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

### **Rules for Calculating the Number of Days in Default**

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

- The 240/270 consecutive days in default is determined by calculating the “age” of the account (that is, the number of consecutive days the oldest dollar is past due).
- A payment that a borrower makes on a past-due loan is applied to the oldest dollars first, effectively reducing the past-due status.
- A loan on which a borrower is past due and on which the borrower makes an occasional payment but never becomes current could be counted as a defaulted loan for the cohort

### **Regaining Eligibility and Perkins Default**

HEA 464(b)

A borrower who is in default on an FSA loan is not eligible for any other further FSA loan unless they have regained eligibility. (See Volume 1, Student Eligibility for guidance on how a student may regain eligibility). However, a borrower who satisfies any of the conditions that remove a Perkins loan from his or her school's cohort default rate calculation (see below) becomes eligible for additional Perkins loans only.

### **Loans not included in CDR**

34 CFR 674.5(c)(3)

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

### Applying payment to oldest dollars first example

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

### Occasional payment/never becoming current example

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

### Adjusting past-due status example

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

default rate calculation despite the occasional payments. Because the delinquency is not being cured, the oldest past-due dollar could eventually become 240 days past due, making the loan count in the cohort default rate calculation. However, if the borrower makes enough occasional payments to prevent the oldest past-due dollar from becoming 240 days old, the loan would not be included in the cohort default rate calculation.

- An exception to the 240/270-day threshold will be granted in a case where a borrower (1) would have qualified for a deferment for a period beginning prior to the loan hitting the 240/270-day threshold and (2) failed to file a request for the deferment in a timely manner.

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

## PENALTIES FOR HIGH COHORT DEFAULT RATES

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

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

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

### Penalty for High CDR

34 CFR 674.5(a)

## Cohort Default Rate for Multiple Locations or Change of Ownership

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

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

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

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

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

Cite: 34 CFR 674.5(d)

