

Perkins Cancellation

A borrower may have all or part of his or her loan cancelled for teaching, certain volunteer service serving in the military or as a law enforcement or corrections officer, or full-time employment in certain other public services. In addition, loans may be discharged if the borrower becomes disabled or dies, or in certain cases involving bankruptcy or school closure.

GENERAL CANCELLATION PROVISIONS

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.

A school must determine, based on the borrower's documentation, whether the borrower is entitled to have any portion of his or her loans cancelled. This responsibility cannot be delegated. For information on documentation, see the appropriate cancellation category in this section.

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.

ED reimbursement to school

If funds are appropriated, the Department will reimburse each school every award year for the principal and interest cancelled from its Perkins Loan Fund for all of the cancellation provisions except for death, total and permanent disability, bankruptcy, and closed school discharge. Note that no funds were appropriated this year for reimbursements for the 2009-10 award year (see the electronic announcement dated May 12, 2011).

If it receives reimbursement, a school must deposit the amount reimbursed in its Perkins Loan Fund. For more information and a full Q&A on reimbursing amounts cancelled, see Dear Colleague Letter CB-05-08.

Note that interest does not accrue on any loan during the period that a borrower is performing service to qualify for cancellation benefits.

Chapter 5 Highlights

- General cancellation provisions
- Cancellation restrictions
- Elementary/secondary teacher cancellation
 - Teaching in low-income schools
 - Teaching in teacher shortage fields
 - Teaching in special education
- Public service cancellations
 - Nurse or medical technician
 - Early intervention
 - Child or family services
 - Prekindergarten, childcare, Head Start
- Law enforcement or corrections officer, public defender cancellations
- Early education cancellation (Head Start, prekindergarten, child care)
- Military service (active duty) cancellation
- Volunteer service cancellations (Peace Corps, AmeriCorps*VISTA)
- Discharging Perkins loans
 - Death or permanent disability discharge
 - Closed school discharge
 - Discharge for 9-11 victims
 - Bankruptcy discharge

Cancellation procedures

34 CFR 674.52

Reimbursements before 7/1/1972

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.

Cancellation rates for military, teachers/public servants

With the exception of cancellations for Head Start and volunteer service, the cancellation rate per completed year of qualifying full-time service is:

- First and second years: 15% of the original principal loan amount, plus the interest that accrued during the year.
- Third and fourth years: 20% of the original principal loan amount, plus the interest that accrued during the year.
- Fifth year: 30% of the original principal loan amount, plus any interest that accrued during the year.

A “year of service” consists of 12 consecutive months of service, except for teaching service, where the borrower must teach full-time for a full academic year or its equivalent. For cancellation rates for Head Start and volunteer service, please see the corresponding sections in this chapter.

Cancellation restrictions

Prior service
34 CFR 674.62(a)
Payment refund
34 CFR 674.62(b)
Defaulted loans
34 CFR 674.52(c)
AmeriCorps
34 CFR 674.52(e)

CANCELLATION RESTRICTIONS

Prior service & payments prior to cancellation

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.

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.

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.

AmeriCorps recipients

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).

ELEMENTARY/SECONDARY TEACHER CANCELLATION

Schools must 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 *low-income school* or a *low-income educational service agency*.
- A teacher in a *teacher shortage field*, including mathematics, science, foreign languages, or bilingual education or any other field of expertise that is determined by a state education agency to have a shortage of qualified teachers in that state.
- A *special-education* teacher, including teachers of infants, toddlers, children, or youth with disabilities.

The cancellation form that the borrower files must be signed by an official in the school system or agency to certify the borrower's service. 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.

To qualify for cancellation based on any of these three conditions, a borrower must teach full-time for a complete academic year or its equivalent. See the next page for exceptions covering special cases, such as illness or pregnancy.

Cancellation for teaching in a low-income school or educational service agency

A borrower qualifies for this cancellation by teaching full-time in a low-income public or other nonprofit elementary or secondary school, or by teaching full-time for an *educational service agency* (ESA) listed in the *Teacher Cancellation Low-Income Directory* (see sidebar).

For cancellation purposes, a borrower employed by an ESA may be teaching

- at a location operated by the ESA (such as a stand-alone school that serves students from many different school districts), or
- in a conventional elementary and secondary school (such as a vocational education teacher employed by the ESA to teach courses in several different secondary schools).

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.

Cancellation for teaching in a teacher shortage field

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins loan for a full-time teacher in a field of expertise that is determined by a state education agency to have a shortage of qualified teachers in that state. A borrower who is teaching in science, mathematics,

Teacher cancellation

Teacher definition 34 CFR 674.51(q)
 Academic year definition 34 CFR 674.51(a)
 Part-time 34 CFR 674.52(b)(1)(i)
 Low-income schools 34 CFR 674.53(a)
 Teaching children & adults 34 CFR 674.53(f)
 Field of expertise 34 CFR 674.51(r)

Teacher cancellation directory

You can identify schools and educational service agencies that are eligible for Perkins deferment and cancellation by searching the *Teacher Cancellation Low-Income Directory* online at: <https://www.tcli.ed.gov>
 Information about the compilation and publication of the directory is available from the Campus-Based Call Center at: 1-877-801-7168 or by email at CBOB@ed.gov

Cancellations for teachers at educational service agencies

These cancellations are for Perkins, NDSL, or Defense loans, for eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether the cancellation category appears on the borrower's promissory note.

HEA section 465(a)

Definition of *educational service agency*:

A regional public multi-service agency authorized by state law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

HEA sections 481(e) and (f)

BIA schools

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.

34 CFR 674.53(a)(5)

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.

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

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. Two half-years count as an academic year if they are complete, consecutive, from different school years (excluding summer session), 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.

Teaching part-time at multiple schools

Schools must grant cancellation to a borrower who is simultaneously teaching part-time in 2 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.

A school may refuse cancellation for simultaneous teaching in two or

more schools if it cannot easily determine that the teaching was full-time.

Teaching 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.

Teaching in a school system

To be eligible for cancellation, a borrower employed in a public or other nonprofit elementary or secondary school system or an educational service agency must be directly employed by the school system.

Teaching in a preschool or prekindergarten program

A borrower may receive teacher cancellation for teaching service performed in a preschool or prekindergarten program 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.

Teaching both children and adults

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

Job Corps teachers

Teaching service performed in a Job Corps Project does not qualify for Perkins cancellation unless the teaching is conducted in an elementary or secondary school or school system.

How are low-income schools & ESAs selected?

The Department selects elementary/secondary schools and educational service agencies (ESAs) for inclusion in the *Teacher Cancellation Low-Income Directory*, in consultation with each state's educational agency, based on these criteria:

- the school or ESA is in a school district that qualifies for "title I" federal funding based on the large number of low-income families in the district; and
- more than 30% of the school's or ESA's enrollment is made up of children from low-income families.

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.

For a borrower to be considered as teaching in a field of expertise that has a shortage of teachers, the majority of classes taught must be in that field of expertise.

Cancellation for teaching in special education

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins loan for a full-time special education teacher of infants, toddlers, children, or youth with disabilities. The teaching service must be performed in a public or other nonprofit elementary or secondary school system.

A person performing one of the following services is considered a teacher if the service is 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

To qualify for cancellation, the borrower must be licensed, certified, or registered by the appropriate state education agency for that area in which he or she is providing related special educational services.

Defining children and youth with disabilities

For children and youth from ages 3 through 21 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 3 through 9, the term a "child with a disability" may include, at the discretion of a state and 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.

Cancellation cites

Definitions - 34 CFR 674.51

Employment cancellations -34 CFR 674.56

- Nurse or medical technician
- Child or family services agency
- Early intervention (disability) services
- Firefighter
- Faculty at Tribal College or University
- Librarian with master's degree at Title I school
- Speech pathologist with master's degree at Title I school

Law enforcement 34 CFR 674.57

Early Childhood Education 34 CFR 674.58

Military service 34 CFR 674.59

Volunteer service 34 CFR 674.60

Cancellation reimbursement 34 CFR 674.63(b)

DCL CB-06-07

GEN-05-15

Sec. 465(a)(2)(l) of the HEA

PUBLIC SERVICE CANCELLATIONS***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.

For purposes of this cancellation—

- a *nurse* is a licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate state agency to provide nursing services.
- a *medical technician* is 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. (See Dear Colleague Letter CB-08-14 for a more detailed discussion of the eligibility requirements for the medical technician cancellation.)

A school may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

Firefighter cancellation

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins loan for service that includes August 14, 2008, or begins on or after that date, as a full-time *firefighter*.

A firefighter is an individual who is employed by a federal, state, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as conducting search and rescue, providing hazardous materials (HAZMAT) mitigation, or providing community disaster support and, as a first responder, providing emergency medical services.

Early intervention (for disabled infants/toddlers) cancellation

Schools must cancel up to 100% of the outstanding balance on 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. "Early intervention services" are provided to infants and toddlers with disabilities, (see box for definition).

This cancellation applies to Perkins loans made on or after July 23, 1992. Perkins loans made prior to that date are eligible for cancellation for early intervention service that is performed on or after October 7, 1998.

Early intervention definitions

Infants and toddlers with disabilities

An individual under 3 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 may also include, at a state's discretion, individuals under age 3, who are at risk of having substantial developmental delays if early intervention services are not provided. Section 632(5)(A) of the Individuals with Disabilities Education Act.

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 Section 632(4).

Title I schools

Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended, provides funding for schools with high numbers or high percentages of poor children.

Elementary and Secondary Education Act
See 20 U.S.C. 70

Child or family services cancellation

A school must cancel up to 100% of the outstanding balance on a Perkins Loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency. To qualify for cancellation, the borrower must be providing services directly and exclusively to *high-risk children* from *low-income communities* and to the families of these children, or supervising the provision of such services. Any services provided to the children’s families must be secondary to the services provided to the children.

For purposes of this cancellation—

- *high-risk children* are defined as 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.
- *low-income communities* are communities in which there is a high concentration of children eligible to be counted under Title I rules (see sidebar).

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; and social services. The Department has determined that an elementary or secondary school system, a hospital, or an institution of higher education 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.

Speech pathologist (at Title I school) cancellation

A school must cancel up to 100% of the outstanding balance on a borrower’s Perkins Loan for full-time employment that includes August 14, 2008, or begins on or after that date, as a speech pathologist. A speech pathologist is someone who evaluates or treats disorders that affect a person’s speech; language; cognition; voice; swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication; swallowing or both; and who has obtained a postgraduate academic degree awarded after the completion of an academic program of up to 6 years in duration (excluding a doctorate or professional degree).

To qualify for cancellation, the speech pathologist must have a master’s degree and be working exclusively with Title I-eligible schools.

Librarian (at Title I school) cancellation

A school must cancel up to 100% of the outstanding Perkins balance for service that includes August 14, 2008, or begins on or after that date, as a full-time librarian.

The librarian must have a master's degree. A *librarian with a master's degree* is defined as an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to 6 years in duration (excluding a doctorate or professional degree).

The librarian must be employed

- in an elementary school or secondary school that is eligible for Title I assistance (see sidebar), or
- by a public library that serves a local school district that contains one or more Title 1-eligible schools.

Faculty member at a tribal college or university.

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins loan for service that includes August 14, 2008, or begins on or after that date, as a full-time faculty member at a Tribal College or University.

A *faculty member at a Tribal College or University* is an educator or tenured individual who is employed by a Tribal College or University to teach, research, or perform administrative functions. For purposes of this definition, an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head.

Tribal college or university

An institution that—

- (1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or
- (2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).
34 CFR 674.51(bb)

The Department of Education maintains a list of tribal colleges and universities at:

<http://www2.ed.gov/about/inits/list/whtc/edlite-tclist.html>

Law enforcement cancellation for loans prior to November 29, 1990

A school must cancel up to 100% of the outstanding loan balance on a Perkins (or NDSL or Defense loan) made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note. The service must be full-time, and be performed over 12 consecutive months.

LAW ENFORCEMENT & PUBLIC DEFENDER CANCELLATIONS

Law enforcement or corrections officer cancellation

A school must cancel up to 100% of a Perkins Loan made on or after November 29, 1990, if the borrower performs full-time service for 12 consecutive months as a law enforcement or corrections officer for an eligible employing agency.

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.

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
- 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, because 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, a sub-unit within a larger, non-law enforcement agency may qualify as a law enforcement agency for purposes of a law enforcement cancellation.

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.

Public defender cancellation

Prosecuting attorneys whose primary responsibilities are to prosecute criminal cases on behalf of public law enforcement agencies are eligible for cancellation benefits. Full-time attorneys employed in *federal public defender organizations* or *community defender organizations* (see sidebar), are now also eligible.

For purposes of this cancellation

- a *community defender organization* is a defender organization established in accordance with section 3006A(g)(2)(B) of Title 18, United States Code.
- a *federal public defender organization* is a defender organization established in accordance with section 3006A(g)(2)(A) of Title 18, United States Code.

Cancellations are for eligible service that includes August 14, 2008, or begins on or after that date, regardless of whether information on the expansion of the cancellation category appears on the borrower's promissory note.

Eligible public/community defender organizations

34 CFR 674.51(e)

Federal public defender organizations or community defender organizations are established in accordance with Section 3006A(g)(2) of Title 18, U.S.C.

Change to military service cancellation limitation

Borrowers may now receive military service cancellation of up to 100% percent of the loan.

Effective for a full year of qualifying service that includes August 14, 2008, or begins after that date.

Military cancellations for earlier loans

- A school must cancel up to 50% of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Armed Forces.
- A school must cancel up to 50% of the outstanding balance on a Perkins/NDSL loan for active duty service that ended before August 14, 2008, as a member of the U.S. armed forces in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code (see below).

The cancellation rate is 12.5% of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

Special pay in areas of hostilities/imminent danger

The Department of Defense maintains an updated listing of hostile fire/imminent danger pay areas at the following URL: www.dod.mil/comptroller/fmr/07a/index.html

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.

MILITARY SERVICE CANCELLATION

A school must cancel up to 100% of the outstanding balance of a Perkins loan for a full year of active duty service in the U.S. armed forces in an *area of hostilities* or an *area of imminent danger* that qualifies for special pay (see sidebar). The "U.S. armed forces" are the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

The borrower's commanding officer must certify the borrower's service dates. Active duty 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.

Areas that qualify for hostile fire/imminent danger pay are listed on the Web (see sidebar). Note that the borrower does not have to serve the full 12 months of active duty service in such an area to qualify for the cancellation. If a borrower is on active duty in such an area for any part of a month, that month counts towards the borrower's eligibility for a military cancellation.

The cancellation rate is the standard progression for up to 100% cancellation: 15% for the first and second year of qualifying service, 20% for the third and fourth year of qualifying service, and 30% for the fifth year of qualifying service.

EARLY CHILDHOOD EDUCATION CANCELLATION (PREKINDERGARTEN, CHILD CARE, HEAD START)

A school must cancel up to 100% of a Perkins Loan if the borrower has served

- as a *full-time staff member* in a *Head Start* program.
- as a *full-time staff member* of a *prekindergarten* or *child care program* that is licensed or regulated by the state.

For purposes of these early education cancellations

- "Head Start" is a preschool program carried out under the Head Start Act (subchapter B, chapter 8 of Title VI of Pub. L. 97–35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809(a)(1))
- A *prekindergarten program* is a state-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development.
- A *child care program* is a program that is licensed or regulated by the state and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work.
- A *full-time staff member* is someone who is regularly employed in a

full-time professional capacity to carry out the educational part of the early education program.

For the prekindergarten and child care program cancellation, the period of service must include August 14, 2008, or begin on or after that date.

In order to qualify for cancellation, the early education program in which the borrower serves must operate for a complete academic year, or its equivalent. The borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the early education program.

The cancellation rate is 15% of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

An official of the early education program should sign the borrower's cancellation form to certify the borrower's service.

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.

For Peace Corps Volunteers, the 12-month periods of service include any pre-enrollment training the Volunteer receives at the Peace Corps Post.

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.

Early education cancellations for Defense loans

• *Head Start.* An institution must cancel up to 100% of the outstanding balance on a Defense loan for service as a full-time staff member in a Head Start program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.



Total and Permanent Disability loan discharge

34 CFR 674.61
GEN 06-14

Definitions of “totally and permanently disabled”

E-Announcements

June 30, 2010, September 10, 2010.

Schools must evaluate all discharge applications received on or after July 1, 2010, in accordance with the revised definition of total and permanent disability (below).

Total and permanent disability is defined as:

The condition of an individual who—

(1) Is unable to engage in any *substantial gainful activity** by reason of any medically determinable physical or mental impairment that—

- (i) Can be expected to result in death;
- (ii) Has lasted for a continuous period of not less than 60 months; or
- (iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

34 CFR 674.51(aa)

* *Substantial gainful activity* is defined as “a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.”

34 CFR 674.51

DISCHARGING PERKINS LOANS

Discharge due to death

You must discharge the remaining balance of any Perkins Loan, NDSL, or Defense Loan if the borrower dies. You must base your determination of death of the borrower on an original or certified copy of the death certificate or an accurate and complete photocopy of the death certificate.

In most cases, the school should try to obtain a copy of the death certificate from the borrower’s next of kin. If the school is unable to obtain a copy from the next of kin, it may be able to obtain a copy from the state vital statistics office.

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

Discharge for total and permanent disability (nonveterans)

If a borrower becomes totally and permanently disabled, he or she must submit a discharge request application certified by a physician who is a doctor of medicine or osteopathy legally authorized to practice in a state. By signing the discharge application, the physician certifies that the borrower is totally and permanently disabled, as defined in the Perkins Loan Program regulations (see sidebar).

The borrower must submit the application to your school within 90 days of the date the physician signed it. The 90-day submission deadline applies to the initial discharge application. The deadline does not apply to requests that your school may make for additional supporting documentation, based on its evaluation of the initial application.

Upon receiving the borrower’s complete application, the school must suspend collection activity on the loan and inform the borrower that the school will review the application and assign the loan to the Department for an eligibility determination if it determines that the application supports the conditions for discharge. If the school determines that the application does not support the conditions for discharge, it must resume collection on the loan.

The school must inform the borrower of the responsibility to return any disbursement of a previously-awarded FSA loan or TEACH Grant that the student receives after the date the physician certified the application. The full amount of the disbursement must be returned to the Department within 120 days of the disbursement date. Failure to do so will cause the loan to be reinstated.

The school must also inform the borrower that the loan will be reinstated if, within 3 years of the date the discharge application was certified, the borrower

- has annual earnings from employment that exceed 100% of the poverty guideline for a family of two.
- receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.

If your school determines, based on certification from the borrower's physician, that the borrower is totally and permanently disabled, it must assign the account to the Department (see sidebar for ED servicers). At that time, it must notify the borrower that it has assigned the account to the Department for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

During its review of the application, the Department may ask the borrower to provide additional medical evidence, and may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

- If the Department concludes that the borrower is totally and permanently disabled, it will discharge the loan and notify the borrower.
- If the Department concludes that the certification provided by the borrower does not establish that the borrower is totally and permanently disabled, the Department will notify the borrower that the discharge application has been denied and that the loan must be repaid to the Department under the terms of the promissory note.

If your school receives payments from a borrower after the physician certifies the borrower's loan discharge application, you must forward these payments to the Department and notify the borrower that there is no need to make payments on the loan while the discharge application is under review, unless the Department informs the borrower otherwise.

Discharge for service-connected disability (veterans)

A veteran's Perkins Loan will be discharged if the veteran is unemployable due to a service-connected disability, as determined by the Department of Veterans Affairs (VA). To qualify for discharge of a Perkins loan based on a disability determination by the VA, a veteran must submit a completed copy of the ED-approved discharge application to the school that holds the loan.

The application does not need to be certified by a physician. Instead, the veteran must include documentation from the VA showing that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to his or her disability.

Disability discharge application

The Department released a PDF version of the revised discharge application for Total and Permanent Disability on August 16, 2010 (GEN-10-15).

Disability discharge servicers

Electronic Announcement Posted: 9/10/2010;
Updated 5/27/2011

- All disability discharge assignments/referrals must be sent to Nelnet Total and Permanent Disability Servicer at:



U.S. Department of Education
3015 South Parker Road, Suite 400
Attn: TPD Servicing
Aurora, CO 80014
Phone: 888/303-7818
Web site: www.disabilitydischarge.com

Closed schools

You can find a searchable database of closed schools online at

<http://wdcrobcolp01.ed.gov/CFAPPS/FSA/closedschool/searchpage.cfm>.

Closed school discharge cite

34 CFR 674.33(g)

When it receives the completed application and the required documentation, the school must suspend collection activity on the loan and inform the veteran that the school will review the application and supporting documentation and—

- if the documentation from Veterans Affairs indicates that the veteran meets the conditions for a service-related disability discharge, the school will submit the application and supporting documentation to the Department’s servicer for an eligibility determination.
- if the documentation from the Veterans Affairs does not indicate that the veteran meets the conditions for the discharge, the school will resume collection on the loan.

The school must also inform the veteran that even if he or she does not qualify for a service-connected disability discharge, the veteran may reapply for a disability discharge if he or she meets the general definition of “totally and permanently disabled” (see previous topic).

The Department of Education will notify the school of its determination of the veteran’s eligibility for the discharge. If the Department concludes that the veteran is eligible for the discharge, the school must discharge the veteran’s obligation to make further payments on the loan. The school must also return any loan payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability. (Any such loan payments must be returned to the person who made them.)

However, if the school or the Department of Education determines, based on a review of the documentation, that the veteran is not totally and permanently disabled, the school must resume collection on the loan.

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 procedures).

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.

Discharge for spouses of 9-11 victims

Schools must discharge the outstanding balance of a Perkins Loan that was made to the spouse of an eligible public servant who died or became permanently and totally disabled due to injuries suffered in the September 11, 2001 terrorist attacks. An eligible public servant is a police officer, firefighter, or other safety or rescue personnel, or a member of the Armed Forces, who died or became permanently and totally disabled due to injuries suffered in the September 11, 2001 terrorist attacks. This discharge is only available on Perkins, NDSL, or Defense Loan amounts that were owed on September 11, 2001. The law doesn't authorize refunding of any payments made on a loan prior to the loan discharge date.

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 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.

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 7 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.

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.

Bankruptcy and student eligibility

See Volume 1 of the *FSA Handbook* for a discussion of how bankruptcy affects a student's eligibility for aid.

Bankruptcy procedures

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 3 to 5 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.

Bankruptcy procedures, continued

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

See previous editions of the *FSA Handbook* for discussion of bankruptcies filed before October 8, 1998.

