Making & Disbursing Loans

CHAPTER 3

A Perkins Loan (or NDSL) is considered to be made when the borrower has signed the promissory note for the award year 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 note only once each award year. The borrower must sign before the school disburses any loan funds to him or her under that note for that award year. However, a school may choose to require a borrower to sign for each advance.

After a student files a FAFSA and the Department determines an official Expected Family Contribution (EFC) for the student, the school must award financial aid based on the student's maximum loan eligibility and the maximum loan amounts for each loan program. For a complete explanation of awarding financial aid, see *Volume 1 - Student Eligibility* and *Volume 4 - Campus-Based Program Common Provisions*.

Maximum Loan Eligibility Calculation

	Financial Need
-	*Other Resources*
=	*Maximum Loan Eligibility*

LOAN MAXIMUMS

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.

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

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 include any amounts borrowed previously under the Federal Perkins Loan Program.

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

Overaward Resolution Cite
FR Vol. 64, No. 145, pg. 41235

made prior to the publication of the revised statutory maximums. (The proposed rule for the revised statutory maximum was published on July 29, 1999)

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.

COUNSELING STUDENTS

Counseling Cite
34 CFR 674.16(a)

Before making the first Perkins Loan or NDSL disbursement, the school must have the student sign the promissory note. (Promissory notes are discussed later in this chapter.) The school must explain the borrower's rights and responsibilities under the Federal Perkins Loan Program, and it must remind the student that the loan may be used only for educational expenses and that the loan must be repaid. The school should also make sure the student knows that the **school** holds the promissory note.

The school must provide all information reviewed during the counseling session 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.

During loan counseling, the school must review all of the repayment terms in the promissory note and update the identification and contact information in the promissory note. In addition, the school must exchange the following information with 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 name, address and telephone numbers of the borrower's parents and spouse;

- the spouse's employer;
- the names and addresses of two or three of the student's personal acquaintances;
- 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 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. However, this counseling may not be used to satisfy the requirement for an exit interview. (See chapter 7 of this volume.)

THE PROMISSORY NOTE

The promissory note is the legally binding document that is evidence of a borrower's indebtedness to a school. A student must sign this note before he or she can receive any Perkins Loan funds and must receive a copy of the note at (or before) the exit interview. 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.

Promissory Note Cite
34 CFR 674.31

The Higher Education Amendments of 1992 eliminated the "defense of infancy." Thus, a minor may sign a promissory note without an endorser or any security, and the minor who signs is responsible for repayment regardless of any state law to the contrary.

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 for loan advances. 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.

Retention of Records Cite
34 CFR 674.19(e)(4)(iii)

When the borrower has fully repaid the Perkins Loan, the school must mark the note "paid in full," have it certified by an official of the school, and give the original note to the borrower. The school must keep a copy of the note for at least three years after the date the loan was paid in full.

Approved Promissory Notes

A school must use a promissory note that the Department has approved. In Dear Colleague Letter CB-96-8, dated May 1996, and Dear Colleague Letter CB-93-9, dated July 1993, the Department issued both **open-ended** and **closed-ended** approved promissory notes for NDSLs and Perkins Loans. (Although schools no longer issue NDSLs to new borrowers, schools must issue NDSLs to borrowers who have outstanding balances on previous NDSLs or Defense Loans.)

If a school uses the July 1993 promissory notes, the school must obtain the borrower's signature for **each advance** (disbursement) of the loan. If a school uses the May 1996 promissory notes, the school must obtain the borrower's signature only once **each award year**.

- **"Closed-end" or "Limited" Note.** This note is valid for not more than 12 months and usually covers one award year or one academic year. It may also be used for a single academic term. The loan amount must be entered in the note. Closed-end notes can be designed for a single disbursement (if the award is less than $501) or multiple disbursements.

- **"Open-ended" Note.** Schools can use an open-ended promissory note to make loans for more than one award year. The borrower signs next to the specified amount of the approved loan each time the school awards a new loan. (For July 1993 promissory notes, the borrower must sign the "Schedule of Advances" each time she receives a disbursement.) If a school uses an open-ended note, it does not have to issue new notes for future loans it makes to the same borrower **unless** the requirements of the Federal Perkins Loan Program are changed by statute or regulation.

The school may make only nonsubstantive changes to the note (such as changes to the type style or the addition of items such as the borrower's driver's license number). A note may be printed on more than one sheet of paper if the borrower signs each page or if each page contains the number of that page plus the total number of pages in the note (for example, page 1 of 3, page 2 of 3).

Limits to Promissory Note Changes Cite
34 CFR 674.31 (a)

Schools may also use the promissory notes issued in Dear Colleague Letter CB-93-9, dated July 1993. The July 1993 promissory notes require additional borrower signatures. Please, refer to CB-93-9 for information on how to use the July 1993 promissory note.

Addendum Required

Until the Department develops and distributes Perkins Loan promissory notes that include the provisions resulting from the 1998 Amendments, school must provide borrowers with a copy of the Addendum to the NDSL and Federal Perkins Loan Promissory Notes. The addendum was published in Dear Partner Letter CB-00-07, May 2000. Borrowers are not obligated to sign the addendum.

For loans made on or after August 1, 2000, schools must provide borrowers a copy of the addendum with the copy of the promissory note.

For loans made between October 7, 1998 and August 1, 2000, schools should provide a copy of the addendum to borrowers in order to inform borrowers of the new borrower benefits. For loans made before October 7, 1998, schools are not required to provide borrowers a copy of the addendum.

Changes in Loan Amount — May 1996 Notes

If a student's initial loan amount **decreases** and a disbursement has been made, the school can choose one of the following options:

- It may leave the loan amount unchanged. (The school's disbursement records will reflect the decreased loan amount. The school may also attach a statement to the promissory note to explain the decreased loan amount.)

- It may change the face of the promissory note to reflect the decreased loan amount. Both the student and the appropriate school official must initial the decrease. A school must not unilaterally change the amount of the loan.

If the student has signed the promissory note and the initial loan amount **increases after a disbursement has been made**, the action a school must take depends on the type of promissory note involved:

- If the student signed a closed-end promissory note, the school **must** issue a new closed-end note reflecting only the increase from the original loan amount.

- If the student signed an open-ended promissory note, the school **must** reflect only the increase in the loan amount on the next line of the note.

Please note, these procedures are not necessary if the school uses the July 1993 promissory note because the July 1993 promissory note requires the borrower's signature for each disbursement.

Minimum Monthly Payment Option

Optional provisions regarding a minimum monthly payment amount are included in the July 1993 sample promissory notes (bracketed paragraphs III(5)(A) and III(5)(B)), and a school may choose to include these provisions. However, a school must either include both paragraphs or omit both paragraphs. If a school includes both paragraphs in the promissory note, the note must state the exact minimum monthly payment amount. If a school does not include the minimum monthly payment option in the note, the school may not require a minimum monthly payment amount from the borrower.

The optional provision regarding a minimum monthly payment amount is included as a single, optional sentence at the end of the repayment paragraph on page 1 of the May 1996 promissory notes. A school would include this sentence in the promissory note if the school is exercising the minimum monthly payment amount provision. Page 2 of the May 1996 promissory notes includes a summary of this provision.

If the optional provisions are 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.)

School-Designed Note

A school may develop its own notes, which may include some or all of the optional provisions in the Department-provided note. (Optional provisions appear in brackets in the Department-provided notes.) However, a school-designed note must include **all** of the required information and must be based on the sample notes the Department has provided. A school may not change the text or the order of the text in the Department-provided notes, and a school may not add provisions to the note. The school may add such information as the student's driver's license number to the note.

There is no minimum size of type or print specified for the notes. However, the notes must be legible so that a borrower would not be able to claim a defense against repayment of the loan because the print was too small to be read.

If a school is developing its own notes, it may use either "closed-end" ("limited") or "open-ended" notes. A note may be printed on more than one sheet of paper if the borrower signs each page or if each page contains the number of that page plus the total number of pages in the note (for example, page 1 of 3, page 2 of 3).

GENERAL DISBURSEMENT REQUIREMENTS

A school must disburse funds in accordance with the cash management requirements of the General Provisions. These requirements are discussed in *Volume 2 - Institutional Eligibility and Participation*. This section discusses disbursement requirements that apply specifically to the Federal Perkins Loan Program.

Power of Attorney

A school official may not use a student's power of attorney to endorse any disbursement check or to sign for any loan advance unless the Department has granted prior approval. Approval will be granted only if the school shows that the funds cannot be directly deposited or electronically transferred and that there is no one else (such as a relative, landlord, or member of the clergy) who could act on behalf of the student. There are no exceptions to gaining prior approval to obtain a student's power of attorney. Students studying abroad should sign the disbursement check and mail it back to the institution.

Power of Attorney Cite
34 CFR 674.16(h)

Frequency of Disbursements

A school that is awarding a Perkins Loan for a full academic year must advance a portion of the loan during each payment period, **even if it does not use standard academic terms**.

Frequency of Disbursements Cite
34 CFR 674.16(b)

In general, to determine the amount of each disbursement, a school will divide the total loan amount by the number of payment periods the student will attend. For a school that measures progress in credit hours and has academic terms, a payment period is defined as a term (a semester, trimester, quarter, or nonstandard term). The definition of payment period for a school that does not have academic terms or a school that measures progress in clock hours is discussed in detail in volume 2.

A school may advance funds **within** a payment period in whatever installments it determines will best meet the student's needs. However, if the total Perkins Loan amount awarded a student is less than $501 for an academic year, only one payment is necessary.

Uneven Costs/Unequal Disbursements

If a student incurs uneven costs or resources during an academic year and needs additional funds during a payment period, the school

Uneven Costs/Unequal Disbursements Cite
34 CFR 674.16(c)

Uneven Costs/Unequal Disbursements Example Cite

Dan will receive a $1,000 Perkins Loan and must spend $300 for books and supplies at the beginning of the school year. Ingram College could disburse that $300 along with the first payment. To determine the first payment, Ingram College subtracts the extra amount (in this case, $300) from the total loan ($1,000) and divides the remainder ($700) by the number of payment periods (in this case, 2). Ingram College then adds the regular amount for one payment period ($350) to the extra amount ($300) to determine the initial payment ($650). The remaining amount ($350) is then disbursed during the second payment period for a total loan of $1,000.

Uneven Costs/Unequal Disbursement Example

$1,000	Total Loan
- $ 300	Additional Costs at Start of School
$ 700	÷ 2 Payment Periods = $350 Regular Payment
$ 350	Regular Payment
+$ 300	Extra for Books & Supplies
$ 650	Total First Disbursement ($350 = Second Disbursement)

may advance the additional amount to the student in whatever manner best meets the student's needs. The school may exercise this option **regardless of whether or not the school uses standard academic terms**.

Returning Funds Disbursed Prior to Attendance

Paying Before the Student Begins Attendance Cite
34 CFR 674.16(f)

If a school advances funds to a student who withdraws or is expelled before the first day of classes, or never begins attendance, all funds disbursed are considered an overpayment. The school must return any advanced amounts to the Perkins Loan Fund.

Credit Bureau Reporting

Credit Bureau Reporting Cite
34 CFR 674.16(i)

Schools must report the date and amount of each disbursement of Federal Perkins Loan to at least one national credit bureau. (Please, see chapter 7 for more information about credit bureau reporting.)