

Making Perkins Loans

CHAPTER 3

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 (EFC) for the student, the school must award financial aid based on the student's loan eligibility and the maximum amounts for each FSA program. For a complete explanation of awarding Perkins funds, see *Volume 3, Chapter 7: Awarding Campus-Based Aid*. As with the other Campus-Based programs, funds from the Perkins Loan Program must be "packaged" with other expected financial assistance to ensure that the student's total aid does not exceed his/her cost of attendance. The packaging process is discussed in *Volume 3, Chapter 8*.

Perkins Loan limits

Annual maximum loan:

Undergraduate.....\$5,500

Graduate8,000

Aggregate maximum loan:

Undergraduate:

Grade levels 1 & 2.....\$11,000|

Grade levels 3 & 4.....\$27,500

Graduate\$60,000

Chapter 3 Highlights

- Making a Perkins Loan
- Disclosure to student prior to 1st loan
- Perkins Promissory Note
 - Retaining the e-MPN
 - Customizing the MPN
- Subsequent disclosures & notifications

Related information

- See *Volume 3* for more detailed information on loan limits, award amounts, and packaging rules.
- See *Volume 4* for the disbursement rules for FSA funds.

Making a loan

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

34 CFR 674.2

NDSL loans

If a Perkins borrower has an outstanding balance on a National Defense Student Loan or National Direct Student Loan when the new loan is obtained, the new loan is treated under the same terms as the earlier loan.

→ Loans made before July 1, 1972 were National Defense Student Loans.

→ Loans made from July 1, 1972 through June 30, 1987 were National Direct Student Loans.

Collecting additional contact information

A school should also attempt to collect the following contact information at the time of disclosure :

- 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, to 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.)

Regulation cites

Disclosure
34 CFR 674.16(a)

DISCLOSURE TO STUDENTS PRIOR TO FIRST DISBURSEMENT

Before making the first Perkins Loan 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 (see sidebar).

Your school must provide the disclosure information annually before the first disbursement of each Perkins Loan made under the MPN.

PERKINS 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.

You must ensure that each Perkins Loan is supported by a legally enforceable promissory note. 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 must either notify the borrower in writing, or mark the original note "paid in full" and return to the borrower. As noted in Chapter 1, your school must keep a copy of the note for at least three years after the date the loan was paid in full.

It is also essential to report to the National Student Loan Data System that the loan has been paid.

Single vs. Multi-Year use of the MPN

The **Master Promissory Note (MPN)** for the Perkins Loan Program 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. 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.

If you choose to use the MPN as a single award-year promissory note, the borrower must sign a new Perkins MPN for each subsequent award year.

School must use ED-approved MPN

A school must use the Federal Perkins MPN that the Department has approved for all Perkins loans.

The most recent version of the Perkins MPN was circulated with Dear Colleague Letter CB-09-05 (September 28, 2009), with minor corrections made based on CB-09-06.

On or after December 31, 2009, only the revised Perkins MPN with the August 31, 2012 expiration date may be distributed.

For more information on the transition to the new note prior to December 31, 2009, see CB-09-05, CB-09-06, and CB-09-07.

MPN cites

Promissory Note

34 CFR 674.31

Retention of records

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

Limits to promissory note changes

34 CFR 674.31(a)

Limits on multi-year use of the MPN

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.

Implementing an electronic Perkins MPN

A school that offers an electronic Perkins MPN must ensure that the text of their electronic version is updated to exactly match the text of the revised Perkins MPN with the August 31, 2012 expiration date. No changes may be made to the text of the MPN except as provided in Dear Colleague Letter CB-09-05 under “Document formats for the revised Perkins MPN and Addendum.” Schools using an electronic Perkins MPN should review the Department’s standards for electronic signatures as provided in Dear Partner Letter GEN-01-06 before implementing an electronic Perkins MPN. Schools wishing to obtain an electronic version (HTML) of the revised Perkins MPN should send a request to: Neil.Sattler@ed.gov. Source: DCL CB-09-07

Prior guidance

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. The Department issued instructions in Dear Colleague Letter CB-06-10 for using the revised Perkins Master Promissory Note.

Perkins Paper MPN mailing address

Department of Education
P.O. Box 5692
Montgomery, AL 36104

Retaining the electronic MPN

If the student completes an electronic MPN (eMPN), your school must maintain the original electronic promissory note, plus a certification and other supporting information, regarding the creation and maintenance of any electronically-signed Perkins Loan promissory note or Master Promissory Note (MPN) and provide this certification to the Department, upon request, should it be needed to enforce an assigned loan. Schools and lenders are required to maintain the electronic promissory note and supporting documentation for at least 3 years after all loan obligations evidenced by the note are satisfied.

Using ED-approved MPN & customizing the MPN

You must use the ED-approved MPN (see sidebar). You may not make changes to, deletions from, or additions to the prescribed language on the MPN. However, you may delete bracketed text and 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.

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.

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

Standards for electronic signatures: highlights for Perkins eMPNs

Before implementing the eMPN, your school should review the *Standards for Electronic Signatures in Electronic Loan Transactions* published in Dear Colleague Letter GEN-01-06.

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.

Why apply these standards?

If your school's system for processing Perkins eMPNs 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 eMPNs 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 eMPNs in place of a paper MPN. 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 eMPNs.

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 eMPNs 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 eMPNs. Give the borrower an opportunity to cancel the signature process.

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

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-09-05 and elsewhere in this chapter.

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.

SUBSEQUENT DISCLOSURES & NOTIFICATIONS

Loan amount, loan period & cumulative balance

Schools must provide loan amount and loan period information to the borrower through a means other than the MPN. Schools may provide this information in any number of formats, such as award letters or other written notifications and disclosures that schools are required to provide to the borrower.

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.

Loan disbursements

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.

You will need to retain subsidiary records of disbursements and adjustment to ensure that each Perkins Loan is legally enforceable. Actual disbursement records or student account records would serve this purpose.

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

Notification of disbursement

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.

FTC “Red Flags Rule” on identity theft & Perkins Loans



The Federal Trade Commission (FTC), in concert with other federal agencies, has issued regulations that require financial institutions and creditors to develop and implement a written identity theft prevention program to detect, prevent, and respond to patterns, practices, or specific activities that may indicate identity theft and are known as “red flags.”

The “Red Flags Rule” applies to institutions participating in the Federal Perkins Loan Program and may apply to other credit programs administered by an institution. Although the “Red Flags Rule” is not issued by the Department of Education, the Department has issued a series of announcements to make schools in the Perkins loan program aware of the requirement, and encourages Perkins schools to review these regulations with their attorneys to ensure compliance.

The Rule became effective on January 1, 2008, with full compliance for all covered entities originally required by November 1, 2008. The FTC has issued several Enforcement Policies delaying enforcement of the Rule. The most recent Enforcement Policy delayed enforcement of the “Red Flags Rule” through December 31, 2010. However, this does not mean that the “Red Flags Rule” is not in effect, but only that the FCC did not enforce the rule through December 31, 2010. The FTC notes that the release of the Enforcement Policy Statement does not affect other federal agencies’ enforcement of the original November 1, 2008 deadline for institutions subject to their oversight to be in compliance.

The FTC noted in a press release (05/28/2010) that it has published a compliance guide for business, and created a template that enables low risk entities to create an identity theft program with an easy-to-use online form (www.ftc.gov/bcp/edu/microsites/redflagsrule/get-started.shtm).

The regulations covering the “Red Flags Rule” were published in the Federal Register on November 9, 2007 by the FTC, the Federal bank regulatory agencies, and the National Credit Union Administration jointly issued regulations (72 FR 63718). Further information about the “Red Flags Rule” and the actual text of the regulations is available on the FTC Web site at <http://www.ftc.gov/opa/2007/10/redflag.shtm>