

Perkins Billing, Collection & Default

CHAPTER 6

When a Perkins Loan enters repayment, your school must follow the Due Diligence requirements of Subpart C of the Perkins regulation (34 CFR 674.41-50). You must afford the borrower maximum opportunity to repay a Federal Perkins Loan. Specific steps the school must take include (but are not limited to) billing the borrower, sending overdue notices, and conducting address searches if the borrower cannot be located. If billing procedures fail, a school must take more aggressive collection steps such as hiring a collection firm and/or litigating. Default in the Federal Perkins Loan Program is defined as “the failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.”

COMMUNICATION WITH BORROWER

While billing and collection activities involve many steps, there are general requirements that your school must adhere to at all times. You must inform the borrower of all program changes that affect his or her rights and responsibilities. Your school must respond promptly to the borrower’s inquiries. If a borrower disputes a loan and you cannot resolve the dispute, you must explain the services provided by the Department’s Federal Student Aid (FSA) Ombudsman’s office.

Keeping current information on a borrower makes it easier for the school to know when repayment must begin and where to send billing notices. The various offices at the school—the admissions, business, alumni, placement, financial aid, and registrar’s offices, and others, as necessary—must provide any available information about the borrower that is relevant to loan repayment, including:

- the borrower’s current enrollment status;
- the borrower’s expected graduation or termination date;
- the date the borrower officially withdraws, drops below half-time enrollment, or is expelled; and
- the borrower’s current name, address, telephone number, Social Security number, and driver’s license number (if any).

Chapter 6 Highlights

- Billing procedures
 - Exit interviews
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- Disclosure of repayment
- Default and collection
- Procedures
 - Billing and collection costs
 - Default status and eligibility
 - Satisfactory repayment
- Perkins rehabilitation
- Perkins assignment
- Default reduction
- Assistance program
- Cohort default rates
- Defining and calculating

General requirements

- General
 - 34 CFR 674.41(a)
- Coordination of information
 - 34 CFR 674.41(b)
- Exit interview
 - 34 CFR 674.42(b)
- Disclosure of repayment information
 - 34 CFR 674.42(a)

For information about maintaining billing and collection records, see Chapter 1 of this volume.

Exit interviews for students enrolled in a correspondence or study-abroad program

In the case of students enrolled in a correspondence program or a study-abroad program that your school approves for credit, you may provide written counseling materials by mail within 30 days after the borrower completes the program.

Perkins NSLDS Reporting

34 CFR 674.16

You must report enrollment and loan status information to NSLDS by the deadline date established in the Federal Register Web site

<http://www.nsls.ed.gov>

Phone number: 1 (800) 999-8219

REQUIREMENTS AT END OF ENROLLMENT

Exit Interviews

Contact with the borrower becomes even more important as the borrower's last day of attendance approaches. Your school must conduct exit counseling with borrowers either in person, by audiovisual presentation, or by interactive electronic means. (If you conduct exit counseling through interactive electronic means, you must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the exit counseling.)

Schools must conduct this counseling shortly before the student graduates or drops below half-time enrollment (if known in advance). If individual interviews are not possible, group interviews are acceptable. Your school may employ third-party servicers to provide Perkins Loans borrowers with exit counseling. In the case of correspondence study, distance education, and students in the study-abroad portion of a program, you may provide written counseling materials by mail within 30 days after the borrower completes the program.

During the exit interview, the financial aid counselor must review and update all of the repayment terms and information addressed in the initial loan counseling session. (See the sidebar on the next page for a list of information included in the loan counseling session.)

The exit interview must also discuss:

- debt-management strategies that would facilitate repayment,
- the availability of FSA loan information on the National Student Loan Database System (NSLDS), and
- how to contact the FSA Ombudsman's office and an explanation of the services this office provides.

As part of the exit information, you must collect the name and address of the borrower's expected employer.

FSA Ombudsman

The Ombudsman's office is a resource for borrowers to use when other approaches to resolving student loan problems have failed. Borrowers should first attempt to resolve complaints by contacting the school, company, agency, or office directly involved. If the borrower has made a reasonable effort to resolve the problem through normal processes and has not been successful, he or she should contact the FSA Ombudsman.

Office of the Ombudsman
U.S. Dept. of Education
830 First St NE
Mailstop #5144
Washington, DC 20202-5144

Toll-free: 1 (877) 557-2575
1 (202) 377-3800
Fax: 1 (202) 275-0549
<http://fsahelp.ed.gov>

The financial aid counselor must emphasize the seriousness and importance of the repayment obligation the borrower is assuming, describing the likely consequences of default, including adverse credit reports, litigation, and referral to a collection agency. The counselor must further emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with the school's educational or other services.

If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling.

Finally, schools must document all exit interviews.

Disclosure of repayment information

Either shortly before the borrower ceases at least half-time study or during the exit interview, schools must disclose critical repayment information to the borrower *in a written statement*. Most of the repayment terms that the school must disclose to the borrower already appear in the promissory note. The school must also give the borrower the following information:

- contact information for requesting a copy of the signed promissory note;
- the name and address of the school to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent;
- the name and address of the party to which payments should be sent;
- the estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin;
- the repayment schedule for all loans covered by the disclosure, including the date the first installment payment is due, the rate of interest, and the number, amount, and frequency of required payments; and
- the total interest charges that the borrower will pay on the loan pursuant to the projected repayment schedule.

If your school exercises the minimum monthly payment option, you must inform the borrower that if he or she wants your school to coordinate payments with another school, he or she must request such coordination.

If a borrower enters the repayment period without the school's knowledge, the school must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

Exit counseling requirements

The HEOA requires each eligible institution, through financial aid offices or otherwise, to conduct exit counseling for borrowers receiving loans made through the Federal Perkins Loan program.

The counseling must include:

- average anticipated monthly repayment amounts based on either 1) the student's indebtedness, or 2) on the average indebtedness of students who have obtained Perkins loans for attendance at the school or in the borrower's program of study;
- debt management strategies to assist the borrower in repaying the debt;
- options the borrower has to prepay each loan or pay each loan on a compressed schedule;
- information on loan forgiveness and cancellation provisions and the conditions under which the borrower may obtain full or partial forgiveness or cancellation of principal and interest;
- information on forbearance provisions and a general description of terms and conditions under which the borrower may defer repayment of principal or interest or be granted an extension of the repayment period or forbearance;
- information on the consequences of default on a loan which includes adverse credit reports and Federal delinquent debt collection procedures and litigation;
- a general description of the types of tax benefits that might be available to borrowers; and
- information on how a borrower can use NSLDS to get information on the status of their loans.

The school must also include the following information on the consequences of consolidating a Perkins Loan:

- the effects of the consolidation on total interest to be paid, fees, and length of repayment;
- the effect on a borrower's underlying loan benefits, which includes grace periods, loan forgiveness, cancellation and deferment;
- the option the borrower has to prepay the loan or to change repayment plans; and
- that borrower benefit programs may vary depending on the lender.

34 CFR 674.42(b)(2)
HEA section 485(b)(1)(A)

Grace period contact

34 CFR 674.42(c)

Contact during grace periods

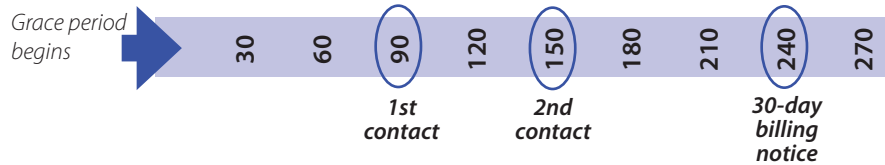
A school must contact the borrower during both initial and post-deferment grace periods to remind him or her when repayment will begin or resume.

Your school must contact the borrower 3 times during the 9-month initial grace period. The school must also contact the borrower twice during any 6-month post-deferment grace period. The chart below shows the length of initial and post-deferment grace periods for NDSLs and Perkins Loans.

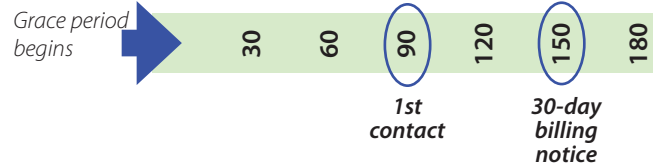
- The *first contact* must be 90 days after any grace period (initial or post-deferment) begins. The school must remind the borrower that he or she is responsible for repaying the loan. The school must also inform the borrower of the amount of principal and interest, as projected for the life of the loan, and the due date and amount of the first (or next) payment.
- The *second contact* must be 150 days after any grace period begins, when the school must again remind the borrower of the due date and amount of the first (or next) payment. For 6-month grace periods, the second contact should coincide with the first billing notice. These two notices may be combined.
- For 9-month grace periods, the school must make a *third contact* 240 days after the grace period begins to remind the borrower of the date and amount of the first payment. This contact should coincide with the first billing notice. Again, the school may combine the two notices.

Contact with borrower during grace period

9-month grace period



6-month grace period



Applicable grace periods	perkins	ndsl	ndsl
		on/after 10/1/80	before 10/1/80
initial grace period	9 months	6 months	9 months
postdeferment period	6 months	6 months	6 months

BILLING PROCEDURES AND OVERDUE PAYMENTS

Billing refers to that series of actions the school routinely performs to notify borrowers of payments due, remind them of overdue payments, and demand payment of overdue amounts.

The school may choose a coupon payment system as its method of billing. If so, the school must send the coupons to the borrower at least 30 days before the first payment is due.

If the school does not use a coupon system, it must, at least *30 days* before the first payment is due, send the borrower a statement of account and a written notice giving the name and address of the party to which payments should be sent. The statement of account includes information such as the total amount borrowed, the interest rate on the loan, and the amount of the monthly payment. For subsequent payments, the school must send the borrower a statement of account at least *15 days* before the due date of the payment.

If the borrower chooses to make payments through electronic funds transfer, the school doesn't have to send the borrower a statement of account before each payment. However, the school must send the borrower an annual statement of account.

Notices of overdue payments

If a payment is overdue and you have not received a request for forbearance, deferment, or cancellation, you must send the borrower:

- the *first* overdue notice 15 days after the payment due date;
- the *second* overdue notice 30 days after the first overdue notice;
- the *final demand letter* 15 days after the second overdue notice.

The assessment of late charges on an overdue Perkins Loan borrower is now optional. The final demand letter must inform the borrower that unless the school receives a payment or a request for forbearance, deferment, or cancellation *within 30 days* of the date of the letter, the school will refer the account for collection or litigation and will report the default to a credit bureau as required by law.

You may skip the first two letters and send just the final demand letter within *15 days* after a payment is overdue if the borrower's repayment history has been unsatisfactory or if you can reasonably conclude the borrower does not intend to repay the loan or to seek forbearance, deferment, or cancellation. A borrower is considered to have an unsatisfactory repayment history if he or she has failed to make payments when due, has failed to request deferment, forbearance, or cancellation on time, or has received a final demand letter.

Billing procedures

34 CFR 674.43

Overdue notices

34 CFR 674.43(b)

34 CFR 674.43(c)

Optional penalty or late charge for periods of enrollment beginning before 1/1/86

34 CFR 674.31(b)(5)(ii)

34 CFR 674 Appendix E

Schools are authorized but not required to assess a penalty or late charge for an overdue payment on a loan made for a period of enrollment that began before January 1, 1986. The maximum penalty charge that may be assessed on a loan payable monthly is \$1 for the first month and \$2 for each additional month a payment is overdue; the maximum penalty for a loan payable bimonthly is \$3; the maximum penalty for loans payable quarterly is \$6. Penalty or late charges on these loans may be assessed only during the billing process.

Billing procedures

- 30 days before due date
 - ▶ *send 30-day notice*
- If the payment is not received—
- within 15 days after due date
 - ▶ *send 1st overdue notice*
- 30 days after 1st notice
 - ▶ *send 2nd notice*
- 15 days after 2nd notice ▶
 - ▶ *send final demand*
- within 30 days of final demand
 - ▶ *phone and refer for collection**
(or litigation, if necessary)

** the school can use the services of the Default Reduction Assistance Program (DRAP) before the loan goes to a collection firm, as discussed in this chapter.*

Cites

Late charges
34 CFR 674.43(b)(2)
Telephone Contact
34 CFR 674.43(f)
34 CFR 675.46(a)(2)
Loan acceleration
34 CFR 674.43(e)
Address search
34 CFR 674.44

Contacting the endorser—loans Before July 23, 1992

For loans made prior to July 23, 1992, the school must also try to collect the amount owed from any endorser of the loan. It may help to send the endorser a copy of the final demand letter that was sent to the borrower and copies of all subsequent notices, including dunning letters. For loans made on or after July 23, 1992, an endorser is no longer required.

Late charges

A school that adopts a policy of assessing late charges on an overdue Perkins Loan must impose them on all borrowers with overdue payments. The charge is based either on the actual costs the school incurs in taking steps to obtain the overdue amount or on average costs incurred in similar attempts with other borrowers. The charge may not exceed 20% of the installment payment most recently due.

If your school assesses a late charge, it must also impose a late charge if a borrower's payment is overdue and the borrower has not filed a complete request for forbearance, deferment, or cancellation on time. (To be complete, the request must contain enough information for you to confirm the borrower's eligibility.) If a school opts to charge late fees, the school may charge late fees only during the billing process; a school may not charge late fees once the school begins collections procedures.

You may add the penalty or late charge to the principal amount of the loan as of the first day the payment was due. Alternatively, you may include the charge with the next payment that is scheduled after the date you notify the borrower that the charge must be paid in full by the next payment due date. You must inform the borrower of the late charge, preferably in the first overdue payment notice.

For a borrower who repays the full amount of past-due payments, the school may waive any late charges that were imposed.

Contacting the borrower by telephone

If the borrower does not respond to the final demand letter within 30 days, you must try to contact him or her by telephone before beginning collection procedures. As telephone contact is often very effective in getting the borrower to begin repayment, one call may avoid the more costly procedures of collection.

You should make at least two attempts to reach the borrower on different days and at different times. If the borrower has an unlisted telephone number, you must make reasonable attempts to obtain it by contacting sources such as the borrower's employer or parents. If you are still unsuccessful, you should document the contact attempts in your files.

Loan acceleration

You may *accelerate* a loan if the borrower misses a payment or does not file for deferment, forbearance, or cancellation on time. Acceleration means immediately making payable the entire outstanding balance, including interest and any applicable late charges or collection fees.

Because this marks a serious stage of default, the borrower should have one last chance to bring his or her account current. For that reason, if the school plans to accelerate the loan, it must send the borrower a written acceleration notice at least 30 days in advance. The notice may be included in the final demand letter or in some other written notice sent to the borrower.

If the loan is accelerated, you must send the borrower another notice to inform him or her of the date the loan was accelerated and the total amount due. Remember that acceleration is an option, not a requirement. However, if you plan to assign the loan to the Department for collection, you must first accelerate the loan. Once a loan has been accelerated, the borrower loses all rights to deferment and cancellation benefits for qualifying service performed *after* the date of acceleration.

Address searches

The school must take the following steps to locate the borrower if communications are returned undelivered (other than unclaimed mail):

- review the records of all appropriate school offices and
- review printed or web-based telephone directories or check with information operators in the area of the borrower's last known address.

If these methods are unsuccessful, you must intensify efforts to locate the borrower, using either school personnel or a commercial skip-trace firm. If you use school personnel, you must employ and document efforts comparable to commercial skip-tracing firms. You may also choose to use the Internal Revenue Service skip-tracing service provided through the Department.

If you still can't locate the borrower after taking these steps, you must continue to make reasonable attempts at least twice a year until the account is assigned to the Department or the account is written off.

Default Reduction Assistance Program

The Default Reduction Assistance Program (DRAP) assists schools in bringing defaulted borrowers into repayment. Under DRAP, a school or a school's third-party servicer can request that the Department send a borrower a letter designed to warn the student of the seriousness of default. The Department provides these services at no cost to the school. Participation in DRAP is voluntary. The new DRAP process is an entirely web-based process conducted at the new eCampus-Based website (www.cbfsap.ed.gov).

Once you have logged into the eCampus-Based website using your FSA User ID and password, select the "DRAP" link on the top navigation bar to begin. You will be able to enter borrower information directly or upload a file with a list of up to 1,000 borrowers and their addresses.

As DRAP is intended to get the borrower back into repayment *before* the account goes to a collection firm, this service should *not* be requested once a collection agency is involved. DRAP service is usually provided during the 30-day period during which a school is awaiting response to the final demand letter.

Electronic Announcement - May 18, 2010

General questions about DRAP should be directed to the
Campus-Based Call Center at
1-877-801-7168 Mon–Fri, 8 a.m. – 8 p.m. EST
or by email to CBFOB@ed.gov

Collection procedures

34 CFR 674.45
 Ombudsman information
 34 CFR 674.45(h)
 Credit bureau reporting
 34 CFR 674.45(a)(1)
 34 CFR 674.45(b)
 First effort to collect
 34 CFR 674.45(a)(2)
 Litigation or second effort
 34 CFR 674.45(c)
 Annual efforts to collect
 34 CFR 674.45(d)

DEFAULT & COLLECTION PROCEDURES

Collection procedures are the more intensive efforts a school must make when borrowers have not responded satisfactorily to billing procedures and are considered seriously in default.

As part of the following collection activities, the school must inform the borrower of the availability of the FSA Ombudsman's Office.

Credit bureau reporting

A school must report an account to credit bureaus as being in default when a borrower fails to respond to the final demand letter or the following telephone contact. You must report the default to any one national credit bureau or to an affiliated credit bureau that transmits credit information to one of the three national credit bureaus with which the Department has an agreement (see box).

You must report any subsequent changes in the status of the borrower's account to the same national credit bureau, using the procedures required by that credit bureau. You must respond within 1 month to any inquiry received from any credit bureau about reported loan information. Finally, you must notify all credit bureaus to which you reported the default when a borrower makes consecutive, on-time monthly payments.

Reporting good credit history (as well as reporting defaulted loans) is essential to ensure that current and future creditors have complete information regarding the credit obligations of the borrower.

Under the Fair Credit Reporting Act, a borrower may appeal the accuracy and validity of the information reported to the credit bureau and reflected in the credit report. You should be prepared to handle the appeal and make necessary corrections to the report as required by the provisions of the act.

Efforts to collect

The school must make a *first effort* to collect using either its own personnel or by hiring a collection firm.

If the school's personnel or the collection firm cannot convert the account to regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, or cancellation), the school has two options—either to litigate or to make a second effort to collect.

A *second effort* to collect requires one of the following procedures:

- *If the school first attempted to collect by using its own personnel*, it must refer the account to a collection firm unless state law prohibits doing so.
- *If the school first used a collection firm*, it must attempt to collect by using its own personnel or by using a different collection firm, or the school must submit the account to the Department for assignment.

National Credit Bureaus

The Department has entered into an agreement with the three national credit bureaus listed below:

Trans Union Corporation	(1-800-888-4213)
Experian (formerly TRW)	(1-888-397-3742)
Equifax	(1-888-202-4025)

National credit bureaus charge fees for their services. These fees differ from credit bureau to credit bureau. Credit bureaus affiliated with the above credit bureaus may have different fees from those of the national credit bureaus. The Department does not keep a list of these affiliated bureaus and their fees.

The Privacy Act authorizes disclosure of a borrower's account information to creditors without the borrower's consent if the disclosure helps enforce the terms and conditions of the loan. You may also make such disclosures about loans that haven't defaulted and/or are being disbursed.

If a collection firm cannot place an account into regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, postponement, or cancellation), the firm must return the account to the school.

If the school is unsuccessful in its effort to place the loan in repayment after following the procedures described above, the school must continue to make yearly attempts to collect from the borrower until the loan is recovered through litigation; the account is assigned to the Department; or the loan is written off.

Ceasing collection

A school may cease collection activity on defaulted accounts with balances of less than \$200 (including outstanding principal, accrued interest, collection costs, and late charges) if the school carried out the required due diligence and if the account has had no activity for four years. Although interest will continue to accrue and may put the account over \$200, you will not have to resume collection activity if you document that you ceased collection activity when the account was under \$200. The borrower will remain responsible for repaying the account, including accrued interest. The account will still be included in the school's cohort default rate, if applicable, and the borrower will still be in default and ineligible for FSA funds.

Alternatives to litigation

To avoid litigation, a school may offer to waive collection costs as incentive for repayment. You may waive *all* collection costs on a loan if the borrower makes a lump-sum payment of the entire amount outstanding, including principal and interest; a written repayment agreement is not required. You may also waive a *portion* of the collection costs on a loan if the borrower agrees to pay a corresponding portion of the loan within 30 days of entering into a written repayment agreement with the school. For example, if the borrower repays 1/2 the outstanding balance on a loan within 30 days of the agreement, the school may waive 1/2 the collection costs incurred through the date of that payment. The amount of waived collection costs may be charged to the Perkins Loan Fund.

IRS Skip-Tracing Program

Previous Handbooks noted that schools could use IRS Skip-Tracing services to locate Perkins borrowers. (See Dear Partner Letter CB-02-16, November 2002.)

However, IRS Skip-Tracing is no longer available to schools that participate in the Perkins Loan Program. See the Electronic Announcement posted on July 10, 2009.

Citations

Ceasing collections
34 CFR 674.47(g)
Litigation
34 CFR 674.46
Compromise
34 CFR 674.33(e)

Account write-off (\$25/\$50)

Your school may write off an account with a balance of less than \$25.00 (including outstanding principal, accrued interest, collection costs, and late charges). Your school may write off an account with a balance of less than \$50 if your school appropriately billed the borrower for at least 2 years. If you write off an account, the borrower is relieved of all payment obligations and you must deduct the amount of the account from the Perkins Loan Fund. If you receive a payment from a borrower after you have written off the loan, you must deposit that payment into the Fund.
34 CFR 674.47(h)

Consolidating defaulted Perkins Loans

A borrower with a defaulted Perkins Loan and an outstanding FFEL or Direct Loan can get information about obtaining a Direct Consolidation Loan by contacting the Direct Loan Consolidation Department at 1-800-557-7392 or by visiting the Direct Loan website: www.direct.ed.gov.

Elimination of defense of infancy

Schools in the Perkins Loan Program are not subject to a defense raised by a borrower on the basis of a claim of infancy under state law. See General Provisions relating to student assistance.

Effective August, 14, 2008
HEOA Section 486:

You may compromise the repayment of a defaulted loan if you have fully complied with all due diligence requirements and the borrower pays, in a single lump-sum payment, at least 90% of the outstanding principal balance, plus all interest and collection fees. The federal share of the compromise repayment must bear the same relation to the school's share as the Federal Capital Contribution (FCC) bears to the Institutional Capital Contribution (ICC).

A borrower may rehabilitate a defaulted Perkins Loan by making 9 consecutive, on-time, monthly payments. A rehabilitated loan is returned to regular repayment status. (See *Rehabilitation* later in this chapter.)

A borrower may include his or her defaulted Perkins Loan, NDSL, or Defense Loan in a Direct Consolidation Loan. The amount eligible for consolidation is the sum of the unpaid principal, accrued unpaid interest, late charges, and outstanding collection costs. A defaulted loan that is being repaid under a court order remains in default status until paid and is not eligible for consolidation.

Litigation

If the collection procedures described in this section do not result in the repayment of a loan, the school must review the account for litigation once every 2 years. If all the conditions are met, the school must litigate. The conditions are:

- the total amount owed, including outstanding principal, interest, collection costs, and late charges, on all the borrower's Perkins Loans and NDSLs at the school is more than \$500;
- the borrower can be located and served with process;
- the borrower either has enough assets attachable under state law to cover a major portion of the debt or enough income that can be garnished under state law to satisfy a major portion of the debt over a reasonable period of time (defining a "reasonable period of time" is left to the school);
- the borrower does not have a defense that will bar judgment for the school; and
- the expected cost of litigation (including attorneys' fees) does not exceed the amount that can be recovered from the borrower.

Even if all the above conditions are not met, your school may still choose to sue a defaulted borrower. If the borrower has a partial defense that may bar judgment for the school, you must weigh the costs of litigation against the costs of recovery based on the amount of the enforceable portion of the debt. No federal or state statute of limitation can apply to enforcement actions to collect Perkins Loans or NDSLs.

Your school must attempt to recover from the borrower all litigation costs, including attorneys' fees, court costs, and other related costs, to the extent permitted by applicable state law. You are also required to try to recover all costs previously incurred in the collection of overdue payments if the borrower has not paid these collection costs; a percentage of these

unrecovered costs may be charged to the Fund as explained later in this chapter under “Billing and Collection Costs.”

When a school has filed suit to collect a defaulted Perkins Loan or NDSL and a judgment has been rendered on the loan, the borrower is obligated to repay only the amount of the judgment obtained on the loan. A defaulted loan that is being repaid under court order remains in default status until paid and is not eligible for consolidation. After a judgment is satisfied on the defaulted loan, the student is again eligible for future awards under these programs if all other eligibility criteria are met.

Assignment

Your school may assign the account to the Department for collection if the amount outstanding is \$25 or more (including principal, interest, collection costs, and late charges) and your school cannot collect a payment after following all collection procedures. For more information about assignment of a loan, see “assignment procedures” at the end of this chapter.

Deceased student & family estate

The HEOA of 2008 provides that a deceased student, a deceased student’s estate, or the estate of such student’s family does not have to repay any Federal Student Aid, including interest, collection costs and other charges. HEOA section 486 | HEA section 484A
Effective date: August 14, 2008

Assessing and documenting collection costs

You may charge either actual costs incurred in collecting the borrower's loan or average costs incurred for similar actions taken to collect loans in similar stages of delinquency. Your school must assess all reasonable collection costs against the borrower despite any provisions of state law that would conflict with the above provisions.

You must document the basis for the costs assessed. For audit purposes, a school must keep documentation supporting costs, including telephone bills and receipts from collection firms.

You should provide a notice explaining to the borrower how your school calculates collection costs.

Billing & Collection

Billing and collection firms

34 CFR 674.48

Assessing costs

34 CFR 674.45(e)

Charging costs to the fund

34 CFR 674.47

Reasonable collection costs

34 CFR 674.45(e)(3)

For loans referred to a collection agency on or after July 1, 2008, collection costs charged the borrower may not exceed:

- first collection effort—30% of the principal, interest, and late charges collected;
- second and subsequent collection efforts—40% of the principal, interest, and late charges collected;
- for collection efforts resulting from litigation, 40% of principal, interest, and late charges collected, plus court costs.

Collection costs waiver

34 CFR 674.47(d)

BILLING AND COLLECTION COSTS

Your school must charge the borrower for reasonable collection costs associated with past-due payments, if your school opts to charge them (not routine billing costs, which are included in the administrative cost allowance [ACA]), and *collection* costs for address searches, use of contractors for collection of the loan, litigation, and/or bankruptcy proceedings.

If your school cannot recover billing and collection costs from the borrower, you may charge the costs to the Fund, provided the costs fall within the specifications described in the following paragraphs. (Collection costs are included in the ACA, but if collection costs exceed the ACA, you must report the additional costs in the separate collection costs category on the FISAP.)

The only *billing* costs a school may charge the Fund are the costs of telephone calls made to demand payment of overdue amounts not paid by the borrower. Even if the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the school may charge the Fund only for the unpaid portion of the actual cost of the calls.

The following *collection* costs may be charged to the Perkins Loan Fund if the costs are *waived* or *not paid by the borrower*:

- ***Collection costs waived.*** If your school waives collection costs as incentive for repayment, the amount waived may be charged to the Fund.
- ***Cost of a successful address search.*** You may charge to the Fund a reasonable amount for the cost of a successful address search if you used a commercial skip-tracing service or employed your school's personnel to locate the borrower using comparable methods. (Defining a reasonable amount is left to the school.)
- ***Cost of reporting defaulted loans to credit bureaus.*** You may charge to the Fund the cost of reporting a defaulted loan to a credit bureau, reporting any change in the status of a defaulted account to the bureau to which the school had previously reported the account, and responding to any inquiry from a credit bureau about the status of a loan.
- ***Costs of first and second collection efforts.*** You may charge to the Fund collection costs not paid by the borrower if they do not exceed—for first collection efforts—30% of the total principal, interest, and late charges collected and—for second collection efforts—40% of the principal, interest, and late charges collected. The school must reimburse the Fund for collection costs initially charged to the Fund but subsequently paid by the borrower.
- ***Collection costs resulting from rehabilitation.*** Collection costs charged to the borrower on a rehabilitated loan may not exceed 24% of the unpaid principal and accrued interest as of the date following application of the 9th payment. Collection costs are not restricted to 24% in the event that the borrower defaults on the rehabilitated loan.

- **Costs of firm performing both collection and litigation services.**
If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, the amount for both functions that may be charged to the Fund may not exceed the sum of **40%** of the amount of principal, interest, and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.
- **Collection costs resulting from litigation, including attorney's fees.**
Collection costs resulting from litigation, including attorney's fees, may be charged to the Fund if not paid by the borrower. (Note that there is a limit on litigation costs that may be charged—see sidebar.)

Due diligence activities involving *fixed costs* (telephone contacts, credit bureau reporting, and bankruptcy procedures) may be charged to the Fund whether or not the actions are successful. Other activities, such as address searches, collection, and litigation (other than bankruptcy), are typically performed on a *contingent-fee* basis. If these activities are *unsuccessful*, there are no costs charged to the school and therefore no costs may be charged to the Fund. If these activities are *successful*, you may charge the associated allowable costs to the Fund.

Limit on charging costs due to litigation

The amount of litigation costs a school charged to the Perkins Loan fund may not exceed the sum of:

- court costs specified in 28 U.S.C. 1920;
- other costs incurred in bankruptcy proceedings in taking actions required or authorized under 34 CFR 674.49;
- costs of other actions in bankruptcy proceedings to the extent that those costs together with other costs incurred in bankruptcy proceedings do not exceed 40% of the total amount of judgment obtained on the loan; and
- 40% of the total amount recovered from the borrower in any other proceeding.

Using Billing and Collection Firms

Your school may use a contractor for billing or collection, but it is still responsible for complying with due diligence regulations regarding those activities. For example, the school, not the billing or collection firm, is responsible for deciding whether to sue a borrower in default. The school is also responsible for decisions about cancelling, or deferring repayment, granting forbearance, extending the repayment period, and safeguarding the funds collected.

If you use a billing service, you may not use a collection firm that owns or controls the billing service or is owned or controlled by the billing service. In addition, you may not use a collection firm if both the collection firm and billing service are owned or controlled by the same corporation, partnership, association, or individual.

Account protection: minimum bond/insurance amounts

A school must ensure that its billing service and collection firm maintain a fidelity bond or comparable insurance to protect the accounts they service.

At least once a year, the school must review the amount of repayments it expects to receive from billing or collection firms to ensure adequate bond or insurance coverage.

A school using a law firm to collect must review the firm's bond or its insurance policy to determine whether the firm is protected against employee misappropriation. If the firm's malpractice insurance also covers misappropriation of funds, that policy is considered to provide coverage.

If you **don't** authorize your collection firm to deduct its fees from borrowers' payments, the firm must be bonded or insured for at least the amount that you expect to be repaid over a two-month period on the assigned accounts.

If you **do** authorize your collection firm to deduct its fees from borrowers' payments, you must ensure that:

- if the amount you expect to be repaid over a two-month period is **less than \$100,000**—the collection firm is bonded or insured for the lesser of (a) 10 times the amount the school expects to be repaid over a two-month period on assigned accounts; or (b) the amount the firm expects to collect in a two-month period on **all** accounts it has in its portfolio (not just the school's account).
- if the amount you expect to be repaid in a two-month period is **\$100,000 or more**—the collection firm has a fidelity bond or comparable insurance **that names your school as the beneficiary** and is bonded or insured for an amount not less than the amount of funds the school can reasonably expect to be repaid during that two-month period.

DEFAULT STATUS AND PERKINS ELIGIBILITY

A borrower who is in default on an FSA loan is not eligible for any other further FSA loans unless they have regained eligibility. (See *Volume 1, Student Eligibility* for guidance on how a student may regain eligibility). However, a borrower who satisfies any of the conditions that remove a Perkins Loan from his or her school's cohort default rate calculation becomes eligible for additional Perkins Loans only (see *Draft FISAP Instruction Booklet*).

Satisfactory repayment arrangements

A borrower who is in default on a Perkins Loan may regain eligibility for further federal student aid by making satisfactory repayment arrangements. (See *Volume 1 - Student Eligibility*.) If the borrower has made satisfactory repayment arrangements, the school must appropriately update the loan status code in the National Student Loan Data System.

Perkins Loan rehabilitation

Your school must establish a rehabilitation program and notify all borrowers with defaulted loans of the option to rehabilitate and the advantages of rehabilitation. A borrower may now rehabilitate a defaulted Perkins Loan by making 9 consecutive on-time payments. (Previously, 12 payments were required—see sidebar.)

Borrowers may not rehabilitate loans on which the holder has obtained a judgment. However, your school may enter into an agreement with the borrower that provides the borrower with some of the benefits of rehabilitation. For example, your school could promise to vacate the current judgment and request the removal of the default from the borrower's credit after the borrower makes 9 consecutive payments and signs a new promissory note.

The rehabilitation payments should be sufficient to satisfy the outstanding balance on the loan within a 10-year repayment period. A school may not establish a loan rehabilitation policy that requires defaulted Perkins Loan borrowers to pay the full outstanding balance of the loan within the 9-month rehabilitation period, if such payments would create a hardship for the borrower. In most cases, such a policy would require a borrower to make excessively high monthly payments, and would, in effect, deny the borrower access to a statutorily mandated benefit of the Perkins Loan Program.

Within 30 days of receiving the borrower's last on-time consecutive monthly payment, you must:

- return the borrower to regular repayment status;
- treat the first of the 9 consecutive payments as the first payment in a new 10-year repayment schedule; and
- instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

After rehabilitating a defaulted loan and returning to regular repayment status, a borrower regains the benefits and privileges of the promissory note, including deferment and cancellation.

Cites

Rehabilitation
34 CFR 674.39
Closed school discharge
34 CFR 674.33(g)

Change to rehabilitation requirement

The HEOA reduces the number of on-time, consecutive, monthly payments required to rehabilitate a loan from 12 to 9. A school may consider borrowers who began making rehabilitation payments prior to August 14, 2008, to have successfully rehabilitated their loans after making nine qualifying monthly payments if at least one of those payments was made on or after August 14, 2008. A school must treat all of its Perkins Loan borrowers consistently in applying the 12-month or 9-month standard for borrowers who began making rehabilitation payments before August 14, 2008.

HEOA section 464
HEA section 464

Rehabilitation agreements prior to November 1, 2002

If, prior to November 1, 2002, you offered rehabilitation to a borrower for loans with judgments, you should honor the rehabilitation agreement. You do not need to offer rehabilitation again if the borrower misses any of the required payments.

Involuntary payments

The term "voluntarily" excludes payments obtained by income tax offset, garnishment, income asset execution, or pursuant to a judgment.

If a borrower chooses to rehabilitate a defaulted loan and then fails to make 9 consecutive on-time payments, the rehabilitation is unsuccessful, but the borrower may still make further attempts to rehabilitate the defaulted loan. Also, if a borrower successfully rehabilitates a defaulted loan and maintains good standing on the loan, the borrower may continue to attempt to rehabilitate other defaulted Perkins loans. However, if the borrower successfully rehabilitates a defaulted loan, but the loan later returns to default, the borrower may not attempt to rehabilitate that loan again or any other defaulted Perkins Loan.

Loans with judgments

When a school has filed suit to collect a defaulted Perkins Loan or NDSL and a judgment has been rendered on the loan, the borrower is obligated to repay only the amount of the judgment obtained on the loan. If the judgment is for less than the outstanding balance on the loan, the school may write off the portion of the loan not covered by the judgment. After a judgment is satisfied on the defaulted loan, the student is again eligible for aid from FSA programs if all other eligibility criteria are met. However, if a borrower has previously satisfied a defaulted student loan *involuntarily* (for instance, through wage garnishment), you should consider this as evidence of unwillingness to repay and should not approve further loan assistance to the borrower.

Previously defaulted loans discharged for school closure

A Perkins Loan made on or after January 1, 1986, may be discharged if the borrower is unable to complete his or her program of study due to the closure of the school that made the loan. A defaulted borrower whose loan is discharged under this closed school provision is eligible for additional federal student aid, provided that he or she meets all other eligibility criteria. (Schools that close must assign all Perkins Loans to FSA Collections. FSA Collections, or the school, if the school still holds the loan, must report to credit bureaus that the loan has been discharged.)

PERKINS ASSIGNMENT

A school may assign defaulted Perkins/NDLS loans to FSA Collections if:

- it has not been able to collect despite having followed due diligence procedures (including at least a first level of collection),
- the total amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs, and late charges, is \$25 or more, and
- the loan has been accelerated.

You may *not* assign a loan to FSA Collections under the voluntary assignment procedures if:

- the borrower has received a discharge in bankruptcy—unless the bankruptcy court has determined that the student loan obligation is nondischargeable and has entered a judgment against the borrower or unless a court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;
- your school has sued the borrower (unless the judgment has been entered and assigned to the United States); or
- the loan has been discharged because the borrower has died.

Upon notification by the Department, you may be required to assign a Perkins loan if your school has knowingly failed to maintain an acceptable collection record with regard to the loan or chooses to stop servicing and collecting its Perkins Loans.

See Chapter 1 for assignment of nondefaulted loans (for example, if your school is closing or is withdrawing from the Perkins program).

Required documentation

A school *may be required* to submit the following documents to FSA Collections for any loan it proposes to assign:

- one original and one photocopy of the assignment form;
- the original promissory note or a certified copy of the original note;
- a copy of the repayment schedule and a complete statement of the payment history;
- copies of all approved requests for deferment and cancellation;
- a copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan;
- documentation that the school has withdrawn the loan from any firm that it employed for address search, billing, collection, or litigation services and has notified that firm to cease collection activity on the loans;
- copies of all pleadings filed or received by the school on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable;
- a certified copy of any judgment order entered on the loan; and

Assignment form and procedures

34 CFR 674.50

Electronic Announcement - June 10 2010

Assignment address

A school should mail assignments to:

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

Reporting "date(s) of first disbursement" on loan manifest

You must report the date each assigned loan was disbursed (attached to the Institutional Certification page of the Perkins Assignment form). The dates listed must match the date of first disbursement initially reported by your school to NSLDS. If multiple loans were combined into one loan, you list the date of first disbursement for the first loan in the combination. If a student received multiple loans reported separately, you list the date of first disbursement for each loan. For more details, see Dear Colleague Letter CB-06-12.

Mandatory assignment

The Department no longer has the authority to require mandatory assignment of Perkins Loans based on a school's Program Participation Agreement.

The Department continues to have the authority to require mandatory assignment if a school has knowingly failed to maintain an acceptable collection record with regard to the loan or chooses to stop servicing and collecting its Perkins Loans.

This statutory change nullifies the mandatory assignment regulations in 34 CFR 674.8(d)(3). HEOA 463

Effective date: August 14, 2008

Assignment under e-signed or Perkins MPN

If you assign loans that were made under an electronically signed promissory note, you must cooperate with the Department in all activities necessary to enforce the loan.

You may be asked to provide an affidavit or certification regarding the creation and maintenance of electronic records of the loan. This affidavit or certification must establish that the records are created and maintained in a form appropriate to ensure admissibility of the loan records in a legal proceeding.

The affidavit or certification must:

- describe the steps followed by the borrower to execute the promissory note;
- include copies of screen shots that would have appeared to the borrower when the borrower signed the note electronically;
- describe field edits and other security measures used to ensure data integrity;
- describe how the promissory note has been preserved to ensure it has not been altered;
- include documentation supporting the school's authentication and electronic signature process; and
- provide any other documentary and technical evidence requested by the Department.

The affidavit or certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains.

An authorized official or employee of the school may have to testify to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

Your school's most recent audit must assess how well your school's e-sign authentication process meets the Department's "Standards for Electronic Signatures in Electronic Student Loan Transactions" (as specified in DCL GEN-01-06).

- documentation that the school has complied with all of the due diligence requirements if the school has a cohort default rate that is equal to or greater than 20% as of June 30 of the second year preceding the submission period.

If you assign loans made under the Perkins MPN, you must maintain disbursement records that document the principal amount loaned until the loan is paid off or otherwise satisfied. You may include disbursement records with the assignment submission. For more details on Perkins Loan Portfolio Liquidation and Assignment, see Electronic Announcement 2010-06-10.

Terms of assignment

If FSA Collections accepts the assignment of a loan, it will give the school written notice to that effect. *By accepting the assignment, the Department acquires all rights, title, and interest in the loan.* You must endorse and forward to the Department any subsequent payment(s) the borrower may make.

If FSA Collections later determines an assigned loan to be unenforceable because of an act or omission on the part of your school or its agent, your school may have to compensate the Perkins Loan Fund in the amount of the unenforceable portion of the outstanding balance. Once the fund is reimbursed, the Department transfers all rights to the loan back to the school.

A borrower whose loan has been assigned to the United States for collection continues to be in default on the loan and is ineligible for FSA funds until the borrower provides confirmation from FSA Collections that he or she has made satisfactory arrangements to repay the loan.

PERKINS COHORT DEFAULT RATES

Your school's cohort default rate is calculated for a particular year based on information you report in Part 3, Sections D and E of the FISAP. For detailed information on how your school's cohort default rate is determined, see Part III of the Draft FISAP Instruction Booklet available under "Publications" on the IFAP Web site.

How the Perkins default rate is calculated

For any award year in which *30 or more borrowers enter repayment*, the cohort default rate is the percentage of those current and former students who enter repayment *in that award year* on loans received for attendance at that school and *who default before the end of the following award year*.

For any award year in which *fewer than 30 current and former students at the school enter repayment* on a loan received at the school, the cohort default rate is the percentage of those current and former students who entered repayment on loans received for attendance at that school in any of the *three most recent award years* and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

For purposes of the cohort default rate, a loan enters repayment only once in its life. This repayment begins the day after the end of the initial grace period or the day that the borrower waives his or her initial grace period.

A borrower is included in determining the school's cohort default rate if the borrower's default has persisted for at least 240 consecutive days for a loan repayable monthly or 270 consecutive days for a loan repayable quarterly.

Perkins loans that are not treated as defaults

The following loans are not treated as defaults when reporting borrower status on Part III of the FISAP:

- loans on which borrowers have made 6 consecutive monthly payments;
- loans on which borrowers have "voluntarily" made all payments currently due;
- loans that borrowers have repaid in full;
- loans for which borrowers have received deferments or forbearance based on conditions that began prior to loans becoming 240/270 days past due;
- loans that have been rehabilitated;
- loans repaid in full under a compromise repayment agreement in accordance with 674.33(e);
- loans that have been discharged due to death or permanent disability, bankruptcy, or a school closing; and
- loans that have been assigned to the ED for determination of eligibility for total and permanent disability discharge.

Perkins CDR calculation

34 CFR 674.5(b)

Loans included in the cohort default rate

34 CFR 674.5(c)

Loans not included in cohort default rate

34 CFR 674.5(c)(3)

Perkins cohort default rates listing

The *Federal Perkins Loan Program Status of Default*, known as the Orange Book, lists the cohort default rates for each school that participates in the Perkins program. See the "Publications" area on the IFAP Web site.

CDR for multiple locations or change of ownership

If a school has a branch or branches or has an additional location or locations, the school's cohort default rate applies to all branches and locations of the school as they exist on the first day of the award year for which the rate is calculated. The cohort default rate applies to all branches/locations of the school from the date the Department notifies the school of the rate until the Department notifies the school that the rate no longer applies.

For more information about the effect of changes of ownership and the treatment of multiple locations in the Perkins rate calculation, see 34 CFR 674.5(d).

Penalty for high CDR

34 CFR 674.5(a)

Adjusting past-due status example

Marty's oldest dollar is 240 days past due. He files a request for a deferment based on the fact that he is attending school and the enrollment period began on the date that the loan became 90 days past due. The past-due status of the loan is reduced to 90 days, and the loan is given a deferment status. This loan is treated as if the 240-day threshold had never been reached. Therefore, it would not be counted in the school's cohort default rate.

Rules for calculating the number of days in default

For purposes of reporting on Part III of the FISAP, a school should use the following rules to calculate the number of days a loan has been in default:

- The 240/270 consecutive days in default is determined by calculating the “age” of the account (that is, the number of consecutive days the oldest dollar is past due).
- A payment that a borrower makes on a past-due loan is applied to the oldest dollars first, effectively reducing the past-due status.
- A loan on which a borrower is past due and on which the borrower makes an occasional payment but never becomes current could be counted as a defaulted loan for the cohort default rate calculation despite the occasional payments. Because the delinquency is not being cured, the oldest past-due dollar could eventually become 240 days past due, making the loan count in the default rate calculation. However, if the borrower makes enough occasional payments to prevent the oldest past-due dollar from becoming 240 days old, the loan would not be counted as being in default.
- An exception to the 240/270-day threshold will be granted in a case where a borrower (1) would have qualified for a deferment for a period beginning prior to the loan hitting the 240/270-day threshold and (2) failed to file a request for the deferment in a timely manner. For such a borrower, the loan's past-due status would be adjusted to reflect the deferment period beginning date. However, the borrower would need to pay any past-due amounts that were due prior to the beginning of the authorized deferment periods, if the deferment period beginning date does not eliminate the loan's entire delinquency.

Penalties for high Perkins default rates

If the school's cohort default rate is

- 25% or higher, the school's FCC will be reduced to zero.
- 50% or higher for the 3 most recent years, the school is ineligible to participate in the Federal Perkins Loan Program and must liquidate its loan portfolio.

A school may appeal a determination of ineligibility if the appeal is based on an inaccurate calculation of its cohort default rate or a low number of borrowers entering repayment. A school appeals a determination of ineligibility based on an inaccurate calculation by adjusting the cohort default rate data on the FISAP.