

Perkins Cancellation

*A borrower may have all or part of his or her loan (including interest) cancelled for engaging in teaching, public service, service in the Peace Corps or AmeriCorps*VISTA, or service in the military. In addition, loans may be discharged if the borrower becomes disabled or dies, or in certain cases involving bankruptcy.*

GENERAL CANCELLATION PROVISIONS

Application for cancellation

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

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

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

ED reimbursement to school

For Perkins Loans and NDSLs, the Department will reimburse each school every award year for the principal and interest cancelled from its Perkins Loan Fund for all of the cancellation provisions except for death, total and permanent disability, bankruptcy, and closed school discharge. The school must deposit in its fund the amount reimbursed. Note that interest does not accrue on any loan during the period that a borrower is performing service to qualify for cancellation benefits. Schools are not required to deposit reimbursements for loans made prior to July 1, 1972, into the Perkins Loan Fund. These reimbursements are considered institutional funds. For more information and a full Q&A on reimbursing amounts cancelled, see Dear Colleague Letter CB-05-08.

Concurrent deferment

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

Chapter 5 Highlights

- General cancellation provisions
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Perkins cancellation extended to loans prior to 10-7-1998

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

Cancellation procedures

34 CFR 674.52

Cancellation rates for military, teachers/public servants

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

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

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

Payment refund cite

34 CFR 674.62(b)

Prior service cite

34 CFR 674.62(a)

Defaulted loans cite

34 CFR 674.52(c)

National community service cite

34 CFR 674.52(e)

CANCELLATION RESTRICTIONS

Prior service & payments prior to cancellation

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

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

Defaulted loans

A school may cancel a defaulted loan if the only reason for the default was the borrower’s failure to file a cancellation request on time. If the loan has already been **accelerated**, only eligible service performed **prior** to the date of acceleration can be considered for cancellation. A borrower is not entitled to cancellation for any eligible service performed **after** the date of acceleration.

Americorps recipients

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

ELEMENTARY/SECONDARY TEACHER CANCELLATION

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

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

Eligibility for teacher cancellation is based on the duties presented in an official position description, not on the position title. To receive a cancellation, the borrower must be **directly employed** by the school system.

Cancellation for teaching in low-income schools

A cancellation based on teaching in a school serving students from low-income families or a location operated by an educational service agency may be granted only if the borrower taught in an eligible school or ESA that is listed in the *Directory of Designated Low-Income Schools for Teacher Cancellation Benefits*. (See sidebar.)

If a borrower is teaching at a school that is on the list one year but not in subsequent years, the borrower may continue to teach in that school and remain eligible to receive a cancellation for service in that school.

Cancellation for teaching in special education

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

A person performing one of the following services is considered a teacher if the service is part of the educational curriculum for handicapped children:

- speech and language pathology and audiology;
- physical therapy;
- occupational therapy;
- psychological and counseling services; or
- recreational therapy

To qualify for cancellation, the borrower must be licensed,

Teacher cancellation

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

Teacher Loan Forgiveness Application and
 Forbearance Forms
 Dear Colleague Letter CB-06-13

NEW Teachers in a low-income education service agency

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

HEOA section 465
 HEA section 465(a)
 DCL GEN-08-12

Teacher cancellation directory

You can identify schools that are eligible for Perkins deferment and cancellation by searching the *Teacher Cancellation Low-Income Directory* online at:
<https://www.tcli.ed.gov>

BIA schools

All elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) are considered to qualify as schools serving low-income families for the purpose of teacher cancellations of Perkins Loans and NDSLs. Elementary and secondary schools operated on reservations by Indian tribal groups under contract with the BIA are also considered to qualify for this purpose.
 34 CFR 674.53(a)(5)

Job Corps teachers

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

Who is a teacher?

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

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

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

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

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

Teaching full-time for a full academic year

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

An "academic year or its equivalent" for teacher cancellation purposes is defined as one complete school year. Two half-years count as an academic year if they are complete, consecutive, from different school years (excluding summer session), and generally fall within a 12-month period.

A borrower who cannot complete the academic year because of illness or pregnancy may still qualify for cancellation if he or she has completed the first half of the academic year and has begun teaching the second half, but the borrower's employer must consider the borrower to have fulfilled his or her contract for the academic year.

Teaching part-time at multiple schools

Schools must grant cancellation to a borrower who is simultaneously teaching part-time in 2 or more schools *if* an official at one of the schools where the borrower taught certifies that the borrower taught full-time for a full academic year. For example:

- under a consortium agreement, a borrower may be employed by the consortium and teach at member schools;
- two or more schools, by mutual agreement, could arrange to have one school employ the borrower on a full-time

basis and then hire out his or her services to the other school(s) involved in the agreement; or

- a borrower can be considered to have been a full-time teacher for an academic year if he or she can obtain appropriate certifications that he or she has taught in two half-time teaching positions for a complete academic year in two elementary or secondary schools or in two secondary schools.

A school may refuse cancellation for simultaneous teaching in two or more schools if it cannot easily determine that the teaching was full-time.

Teaching in a private school

A borrower may receive teacher cancellation for services performed in a private elementary or secondary school or academy, if the private school or academy has established its nonprofit status with the Internal Revenue Service (IRS) and if the school or academy is providing elementary or secondary education according to state law. The school or academy does not necessarily need to be accredited for a borrower teaching there to qualify for teacher cancellation.

Teaching in a preschool or prekindergarten program

A borrower may receive teacher cancellation for teaching service performed in a preschool or prekindergarten program the state considers the program to be a part of its elementary education program. A low-income-school-directory designation that includes prekindergarten or kindergarten does not suffice for a state determination of program eligibility. The school must check with the state superintendent of public instruction to determine whether these programs are part of the state elementary education program.

Teaching both children and adults

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

Low-income school directory

The Department maintains a *Teacher Cancellation Low-Income Directory* of elementary/secondary schools and educational service agencies providing services to low-income students, in consultation with each state's educational agency. The Department considers a school to be a low-income school only if:

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

Information about the compilation and publication of the directory is available from the Campus-Based Call Center at: 1-877-801-7168 or Pamela Wills (pamela.wills@ed.gov).

certified, or registered by the appropriate state education agency for that area in which he or she is providing related special educational services.

Cancellation for teaching in a teacher shortage field

A school must cancel up to 100% of the outstanding balance on a borrower's Perkins loan for a full-time teacher in a field of expertise that is determined by a state education agency to have a shortage of qualified teachers in that state. A borrower who is teaching in science, mathematics, foreign language, or bilingual education qualifies for cancellation even if the state has not designated the subject area in which he or she is teaching as a shortage area.

For a borrower to be considered as teaching in a field of expertise that has been identified by a state education agency to have a shortage of teachers, the majority of classes taught must be in that field of expertise.

Low-income educational service agency

A teacher in a designated low-income elementary or secondary school who is employed by an educational service agency may qualify for a teacher cancellation. In addition, a teacher in a designated low-income elementary school, secondary school, or location operated by an educational service agency may qualify for a teacher cancellation.

An “educational service agency” is a regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies. The Department will determine whether a school or location operated by an educational service agency is low-income pursuant to regulations of the Department and after consultation with the State education agency.

Educational service agency

Definition

The term “educational service agency” has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

NEW

HEOA section 481

HEA sections 481(e) and (f)

PUBLIC SERVICE CANCELLATIONS

NEW

Cancellation cites

Nurse or medical technician
34 CFR 674.56(a)

Child or family services agency
34 CFR 674.56(b)
GEN-05-15
Sec. 465(a)(2)(l) of the HEA

New cancellation provisions in HEOA

NEW

- Cancellation for firefighters, Tribal College/ University faculty, librarians and speech-language pathologists at Title I-funded schools.
 - Expansion of eligibility for Teacher, Head Start, and Law Enforcement cancellations
 - Increase in military service cancellation amounts
- HEOA section 465
HEA section 465(a)
Effective August 14, 2008

New cancellations for public service

Schools may now cancel loans for borrowers who are

- full-time fire fighters with a local, State, or Federal fire department or fire district,
- full-time faculty members at a Tribal College or University,
- librarians with a master's degree in library science who are employed in an elementary or secondary school that qualifies for Title I funding, or in a public library that serves a geographic area that includes one or more Title I schools, and
- full-time speech-language pathologists with a master's degree who are working exclusively with Title I-eligible schools.

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

Nurse or Medical Technician Cancellation

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full-time as a *nurse* or *medical technician* providing health care services. The borrower must provide health care services *directly* to patients. (See definitions at the end of this chapter and Dear Colleague Letter CB-08014.)

Child or Family Services Cancellation

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full-time as an employee of an eligible public or private nonprofit child or family service agency and has directly and exclusively provided services to *high-risk children* who are from *low-income communities* or has supervised the provision of such services.

To receive loan cancellation for being employed at a child or family service agency, a borrower employed in a non-supervisory capacity must be providing services only to high-risk children who are from low-income communities. The borrower must provide services directly and exclusively to high-risk children from low-income communities. The borrower may also be providing services to adults, but these adults must be members of the families of the children for whom services are provided, and the services provided to adults must be secondary to the services provided to the high-risk children.

The types of services a borrower may provide to qualify for a child or family service cancellation include child care and child development services, health, mental health and psychological services, as well as social services. The Department has determined that an elementary or secondary school system or a hospital is not an eligible employing agency. When reviewing child or family service cancellation requests, Perkins schools and their servicers should refer to Dear Colleague Letter GEN-5-15, which provides a more detailed discussion of the eligibility requirements for child or family service cancellations.

Early Intervention cancellation

Schools must cancel up to 100% of a Perkins Loan if the borrower has been employed full-time as a *qualified professional provider of early intervention services* in a public or other nonprofit program under public supervision.

Prekindergarten, childcare, Head Start cancellation

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full-time as a staff member in a prekindergarten or childcare program, or in the educational part of a preschool program carried out under the Head Start Act.

A full-time staff member is someone who is regularly employed in a full-time professional capacity to carry out the educational part of a Head Start Program. The program must operate for a full academic year, or its equivalent, and the borrower's salary may not be more than that of a comparable employee working in the local educational agency. An authorized official of the Head Start Program must sign the borrower's cancellation form to certify the borrower's service.

The cancellation rate is 15% of the original principal loan amount—plus the interest that accrued during the year—for each complete school year.

Law enforcement, corrections officer, public defender cancellation

Schools must cancel up to 100% of a Perkins Loan if the borrower has served full-time as a qualifying law enforcement, corrections officer, or attorney employed in Federal Public Defender Organizations or Community Defender Organizations (see sidebar).

To establish the eligibility of a borrower for the law enforcement or corrections officer cancellation provision, the school must determine that (1) the borrower's employing agency is eligible and that (2) the borrower's position is essential to the agency's primary mission.

A local, state, or federal agency is an eligible employing agency if it is publicly funded and its activities pertain to crime prevention, control, or reduction, or to the enforcement of the criminal law. Such activities include, but are not limited to

- police efforts to prevent, control, or reduce crime or to apprehend criminals;
- activities of courts and related agencies having criminal jurisdiction;
- activities of corrections, probation, or parole authorities; and
- the prevention, control, or reduction of juvenile delinquency or narcotic addiction.

Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible. However, because the activities of many divisions and bureaus within local, state, and

Reg citations

Early intervention 34 CFR 674.56(c)
Law enforcement 34 CFR 674.57
Head Start 34 CFR 674.58
Military service 34 CFR 674.59
Volunteer service 34 CFR 674.60

Cancellation reimbursement
34 CFR 674.63(b)
DCL CB-06-07

Early childhood education program cancellation

NEW

Proposed regulations for Perkins would expand the Head Start cancellation to cover qualifying early childhood education programs.

See Federal Register for July 28, 2009

Public Defender cancellation

NEW

The law enforcement/corrections officer cancellation has been expanded to include full-time attorneys employed in Federal Public Defender Organizations or Community Defender Organizations, established in accordance with Section 3006A(g)(2) of Title 18, U.S.C.

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

Change to military service cancellation limitation

The HEOA removes the 50% limitation on military service cancellations. Borrowers may now receive military service cancellation of up to 100% percent of the loan.

Effective date: August 14, 2008

HEOA 465

HEA 465(a)

Cancellations for Defense Loans

Borrowers of Defense Loans are eligible for additional teaching cancellations.

See 34 CFR 674.55.

Armed forces in areas of hostilities/imminent danger area

The Department of Defense maintains an updated listing of hostile fire/imminent danger pay areas at the following URL:

www.dod.mil/comptroller/fmr/07a/index.html

Eligibility for special pay for service in an *area of hostilities* or an *area of imminent danger* is defined in Section 310 of Title 37 of the U.S. Code.

The “U.S. armed forces” are the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

NOTE: for Defense Loan cancellation, the service does not have to be in an area of hostilities or area of imminent danger.

The Department of Defense does not prorate or reduce a hostile fire/imminent danger pay area payment if the service in the hostile fire/imminent danger pay area is for a period of time less than a full month. If a member of the U.S. Armed forces is on active duty in a hostile fire/imminent danger pay area for any part of a month, the service member qualifies for the full payment of hostile fire/imminent danger pay for that month.

federal agencies pertain to crime prevention, control, or reduction, or to the enforcement of criminal law, a sub-unit within a larger, non-law enforcement agency may qualify as a law enforcement agency for purposes of a law enforcement cancellation.

For the borrower’s position to be considered essential to the agency’s primary mission, he or she must be a full-time employee of an eligible agency and a sworn law enforcement or corrections officer or person whose principal responsibilities are unique to the criminal justice system and are essential in the performance of the agency’s primary mission. The agency must be able to document the employee’s functions.

Prosecuting attorneys whose primary responsibilities are to prosecute criminal cases on behalf of public law enforcement agencies are eligible for cancellation benefits. Full-time attorneys employed in Federal Public Defender Organizations or Community Defender Organizations, are now also eligible.

Individuals whose official responsibilities are supportive, such as those that involve typing, filing, accounting, office procedures, purchasing, stock control, food service, transportation, or building, equipment, or grounds maintenance are not eligible for the law enforcement or correction officer loan cancellation, regardless of where these functions are performed.

Military service cancellation for active duty

Schools must cancel up to 100% of a Perkins Loan if the borrower is serving or has served a period of full-time active duty in the U.S. armed forces in an *area of hostilities* or an *area of imminent danger* that qualifies for special pay (see sidebar). The borrower’s commanding officer must certify the borrower’s service dates.

Effective August 14, 2008, the cancellation rates are: **NEW**

- 15% for the first and second years of service,
- 20% for the third and fourth years of service, and
- 30% for the fifth year of service.

Service for less than a complete year or a fraction of a year beyond a complete year does not qualify. A complete year of service is 12 consecutive months. If a borrower is on active duty in a hostile fire/imminent danger pay area for any part of a month, that month counts towards the borrower’s eligibility for a military cancellation.

Volunteer Service Cancellation

Schools must cancel up to 70% of a Perkins Loan if the borrower has served as a Peace Corps or AmeriCorps*VISTA (under Title I, Part A of the Domestic Volunteer Service Act of 1973) volunteer. An authorized official of the Peace Corps or AmeriCorps*VISTA program must sign the borrower's cancellation form to certify the borrower's service.

Americorps volunteers do not qualify for this cancellation unless their volunteer service is with AmeriCorps*VISTA. An AmeriCorps*VISTA volunteer may only qualify for this cancellation if the AmeriCorps*VISTA volunteer elects not to receive a national service education award for his or her volunteer service. The AmeriCorps*VISTA volunteer must provide appropriate documentation showing that the volunteer has declined the Americorps national service education award.

Schools apply cancellation for volunteer service in the following increments:

- 15% of the original principal loan amount—plus any interest that accrued during the year—for each of the first and second 12-month periods of service; and
- 20% of the original principal loan amount—plus any interest that accrued during the year—for each of the third and fourth 12-month periods of service.

U.S. Army loan repayment program

It is useful to know that the U.S. Army offers a loan repayment program as an enlistment incentive. If a Perkins Loan (or Stafford Loan) borrower serves as an enlisted person in the U.S. Army, in the Army Reserves, or in the Army National Guard, the U.S. Department of Defense will repay a portion of the loan. For more information, the student should contact his or her local military recruiting office. This is a recruitment program, not a cancellation, and does not pertain to an individual's prior Army service.

DEFINITIONS

The following are definitions of terms used in this chapter (from 34 CFR 674.51):

Children and youth with disabilities. Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in Section 602(3) of the Individuals with Disabilities Education Act (the Act).

The Act defines a “child with a disability” as one (1) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (2) who, by reason thereof, needs special education and related services.

For a child age 3 through 9, the term a “child with a disability” may include, at the discretion of a state and the local education agency, individuals (1) experiencing developmental delays, as defined by the state and as measured by appropriate instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) who, by reason thereof, require special education and related services.

Early intervention services. Those services defined in Section 632(4) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

High-risk children. Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

Infants and toddlers with disabilities. Infants and toddlers under age 3, inclusive, who need early intervention services for specified reasons, as defined in Section 632(5)(A) of the Individuals with Disabilities Education Act.

The Act defines an infant or toddler with a disability as an individual under 3 years of age who needs early intervention services because the individual (1) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (2) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

The term **infants and toddlers with disabilities** may also include, at a state’s discretion, individuals under age 3, who are at risk of having substantial developmental delays if early intervention services are not provided.

Low-income communities. Communities in which there is a high concentration of children eligible to be counted under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Medical Technician. An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate state agency in the state in which he or she provides health care services; an allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

Nurse. A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate state agency to provide nursing services.

Qualified professional provider of early intervention services. A provider of services, as defined in Section 632 of the Individuals with Disabilities Education Act.

Section 632 of that Act defines early intervention services as developmental services that:

- are provided under public supervision;
- are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;
- are designed to meet the developmental needs of an infant or toddler with a disability in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development;
- meet the standards of the state in which they are provided;
- are provided by qualified personnel, including: special educators; speech and language pathologists and audiologists; occupational therapists; physical therapists; psychologists; social workers; nurses; nutritionists; family therapists; orientation and mobility specialists; and pediatricians and other physicians;
- to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
- are provided in conformity with an individualized family service plan adopted in accordance with Section 636 of the Individuals with Disabilities Education Act.

Under the Individuals with Disabilities Education Act, early intervention services include: family training, counseling, and home visits; special instruction; speech-language pathology and audiology services; occupational therapy; physical therapy; psychological services; service coordination services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the infant or toddler to benefit from the other early intervention services; social work services; vision services; assistive technology devices and services; and transportation and related costs necessary to enable infants, toddlers, and their families to receive other services identified in Section 632(4).

Teaching in a field of expertise. The majority of classes taught are in the borrower’s field of expertise.

PROPOSED PERKINS CANCELLATION DEFINITIONS NEW

The following are proposed definitions of key terms used in this chapter from 34 CFR 674.56 (Employment cancellation--Federal Perkins, NDSL and Defense loans) to incorporate the new public service employment cancellations reflected in amended section 465(a) of the HEA.

The following definitions were included in a Notice of Proposed Rulemaking published in the Federal Register on July 28, 2009. Final regulations governing the new Perkins cancellations will be published in the Oct., 2009 Federal Register. Schools may use these definitions as guidelines for making determinations of eligibility for the new Perkins cancellation categories prior to the publication of the final regulations.

Child care program. [674.58(c)(3)]. A child care program would be defined as a program that is licensed and regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work (see proposed § 674.58(c)(3)).

Community defender organization. A defender organization established in accordance with section 3006A(g)(2)(B) of title 18, United States Code.[674.51(e)]

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

Faculty member at a Tribal College or University. An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head. [674.51(i)]

Federal public defender organization. A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

Firefighter. A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as--

- (1) Providing community disaster support and, as a first responder, providing emergency medical services;
- (2) Conducting search and rescue; or
- (3) Providing hazardous materials mitigation (HAZMAT).

Librarian with a master's degree. A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

Pre-Kindergarten program. [674.58(c)(2)] A prekindergarten program would be defined as a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development (see proposed § 674.58(c)(2)).

Speech language pathologist with a master's degree. An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

Tribal College or University. A Tribal College or University is an institution that qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.), or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note), or is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note) (see proposed § 674.51(bb)).

Total and Permanent Disability loan discharge

34 CFR 674.61
GEN 06-14

For additional information on assigning loans for discharge contact:

Disability Discharge Loan Servicing Center

Phone: 1-888-869-4169
TDD: 1-888-636-6401
e-mail: disability_discharge@afsa.com

VA disability discharge

Borrowers who receive a permanent total disability rating from the Secretary of Veterans Affairs due to a service-connected condition will be considered permanently and totally disabled. See CB 09-04

Deceased student & family estate

NEW

The HEOA 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

Discharge due to inability to engage in gainful activity

NEW

Effective July 1, 2010, the HEOA provides for a discharge of a borrower's Perkins Loan if the borrower is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that

- can be expected to result in death;
- has lasted for a continuous period of not less than 60 months; or
- can be expected to last for a continuous period of not less than 60 months.

In addition, a borrower who is determined by the VA to be unemployable due to a service-connected disability also qualifies for a discharge on his or her Perkins Loan.

The Department will issue additional guidance to Perkins loan holders describing the procedures for discharging these loans after working with the VA to identify the appropriate documentation to support a borrower's eligibility for the discharge.

DISCHARGING PERKINS LOANS

Discharge due to Death or Total and Permanent Disability

You must discharge the remaining balance of any Perkins Loan, NDSL, or Defense Loan if the borrower dies or becomes totally and permanently disabled. Total and permanent disability is the inability to work and earn money because of an injury or illness that is expected to continue indefinitely or to result in death. Your school does not receive reimbursement for discharges due to death or disability.

You must base your determination of death of the borrower on an original or certified copy of the death certificate, or an accurate and complete photocopy of the death certificate. Under exceptional circumstances and on a case-by-case basis, your school's chief financial officer may approve a discharge based upon other reliable documentation supporting the discharge request.

The borrower must submit a completed total and permanent disability (TPD) discharge request application to your school within 90 days of the date the physician signs the TPD application. The 90 day submission deadline applies to the initial TPD application; should your school's evaluation result in requests for additional supporting documentation, this does not break the 90 day deadline. By signing the TPD form, the physician certifies that the borrower is totally and permanently disabled, as defined in the Perkins Loan Program regulations.

If your school determines, based on certification from the borrower's physician, that the borrower is totally and permanently disabled, your school must assign the account to the Department. You must notify the borrower that you have assigned the account to the Department for determination of eligibility for a total and permanent disability discharge. If the Department makes an initial determination that the borrower is eligible for discharge, the Department will place the loan in a conditional discharge status for up to 3 years after the date the borrower's TPD application is certified.

A borrower does not qualify for final discharge if he or she has a loan awarded after the date the TPD certification is certified. If a borrower receives a disbursement of a Title IV loan awarded prior to the date the TPD application was certified, the borrower must cancel or repay the disbursement within 120 days of the disbursement date in order to retain eligibility for final TPD discharge.

A borrower may receive income from employment during the conditional discharge period, as long as the earnings do not exceed 100% of the poverty line for a family of two. A borrower loses eligibility for final discharge if he or she has employment earnings over this limit.

A loan placed in conditional discharge status is not considered past due or in default unless the loan was past due or in default at the time the conditional discharge was granted.

If your school receives payments from a borrower on a loan that is in conditional discharge status, you must forward these payments to the Department and notify the borrower that there is no need to make payments on the loan while it is in conditional discharge status.

- For applications processed under the new regulations (received on or after July 1, 2008), loan holders must inform the Department of the amount of any payments received after the date the physician signed the application.
- For applications processed under the old regulations (received before July 1, 2008), loan holders must inform the Department of the amount of payments received after the date provided in Section 3, line 3b of the application.

If the Department grants final discharge to the borrower, your school must refund any payments received after the date the physician signed the discharge application. (For applications received prior to July 1, 2008, your school must refund any payments received after the date provided in Section 3, line 3b of the application.)

Closed School Discharge

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

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

A borrower whose loan was in default and then discharged under this provision is not considered to have been in default and reestablishes FSA eligibility, provided he or she meets all other eligibility criteria. FSA Collections reports the discharge to the credit bureaus to which the previous loan status was reported.

Bankruptcy Discharge

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

If a school receives notice that a borrower has filed for bankruptcy protection, it must immediately stop collection efforts (outside the bankruptcy proceeding itself). If the borrower has filed under Chapter 12 or 13 of the Bankruptcy Code, the school must also suspend collection efforts against any endorser.

Disability discharges received on or after July 1, 2008

NEW

For all applications for disability discharge received by the loan holder on or after July 1, 2008 on the current loan discharge application, the following fields no longer need to be completed:

1. Section 3 (Physician's Certification), Line 2 (When did the borrower's medical condition begin?); and

2. Section 3 (Physician's Certification), Line 3b (If Yes, when did the borrower become unable to work and earn money in any capacity?)

The Department will not reject an assignment due to either of these fields being missed or incomplete, as long as the application was received by the loan holder on or after July 1, 2008.

Earlier disability loan discharges

If the borrower's TPD application receipt date is on or after July 1, 2008, you must use the TPD guidance in the 2008–2009 edition of the FSA Handbook.

If the borrower's TPD application receipt date is before July 1, 2008, you must use the TPD guidance published in the *2007–2008 FSA Handbook*.

For more information, see the July 9, 2008 Electronic Announcement posted on IFAP.

Closed schools

You can find a searchable database of closed schools online at

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

Closed school discharge cite
34 CFR 674.33(g)

Bankruptcy laws

11 U.S.C. 1307, 1325, and 1328(b) are laws applicable to bankruptcy cases in general, not just to Perkins Loan bankruptcy cases.

11 U.S.C. 1307 concerns the dismissal of a Chapter 13 case or the conversion of a case filed under Chapter 13 to a Chapter 7 proceeding.

11 U.S.C. 1325 concerns the confirmation by the court of a borrower's proposed repayment plan.

11 U.S.C. 1328(b) allows a debtor who fails to complete the payments required under the plan to obtain a discharge if conditions are met. A school should consult an attorney for the best advice in bankruptcy cases.

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

Effective for bankruptcies filed on or after October 8, 1998, a borrower who receives a general discharge in bankruptcy does not by that order obtain a discharge of a loan that has been in repayment for 7 years or more at the time of the bankruptcy filing. For these bankruptcies, a student loan is discharged by a general discharge order only if the borrower also obtains a court ruling that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

Bankruptcy and student eligibility

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

9-11 public service discharge

The Third Higher Education Extension Act of 2006 (THEAA) authorized the discharge of the outstanding balance of a Perkins Loan made to the spouse of an eligible public servant.

September 11 Perkins Discharge application
GEN-07-08

Discharge for spouses of 9-11 victims

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

Bankruptcy procedures

Responding to complaint for determination of dischargeability

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

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

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

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

Procedures for responding to proposed Chapter 13 repayment plan

Under Chapter 13, the borrower may generally obtain an adjustment in repayment terms of all of his/her debts. The borrower proposes a repayment plan that addresses whether and how each debt or class of debts will be paid. If the court approves the plan, creditors are bound to the terms of that plan for duration of the plan, typically 3 to 5 years. If the borrower's repayment plan proposes full repayment of the Perkins Loan, including all principal, interest, late charges, and collection costs on the loan, no response from the school is required. The school is also not required to respond to a proposed repayment plan that does not include any provision in regard to the Perkins Loan obligation or to general unsecured claims.

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

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

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

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

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

Resuming/terminating billing and collection

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

Bankruptcies filed before October 8, 1998

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