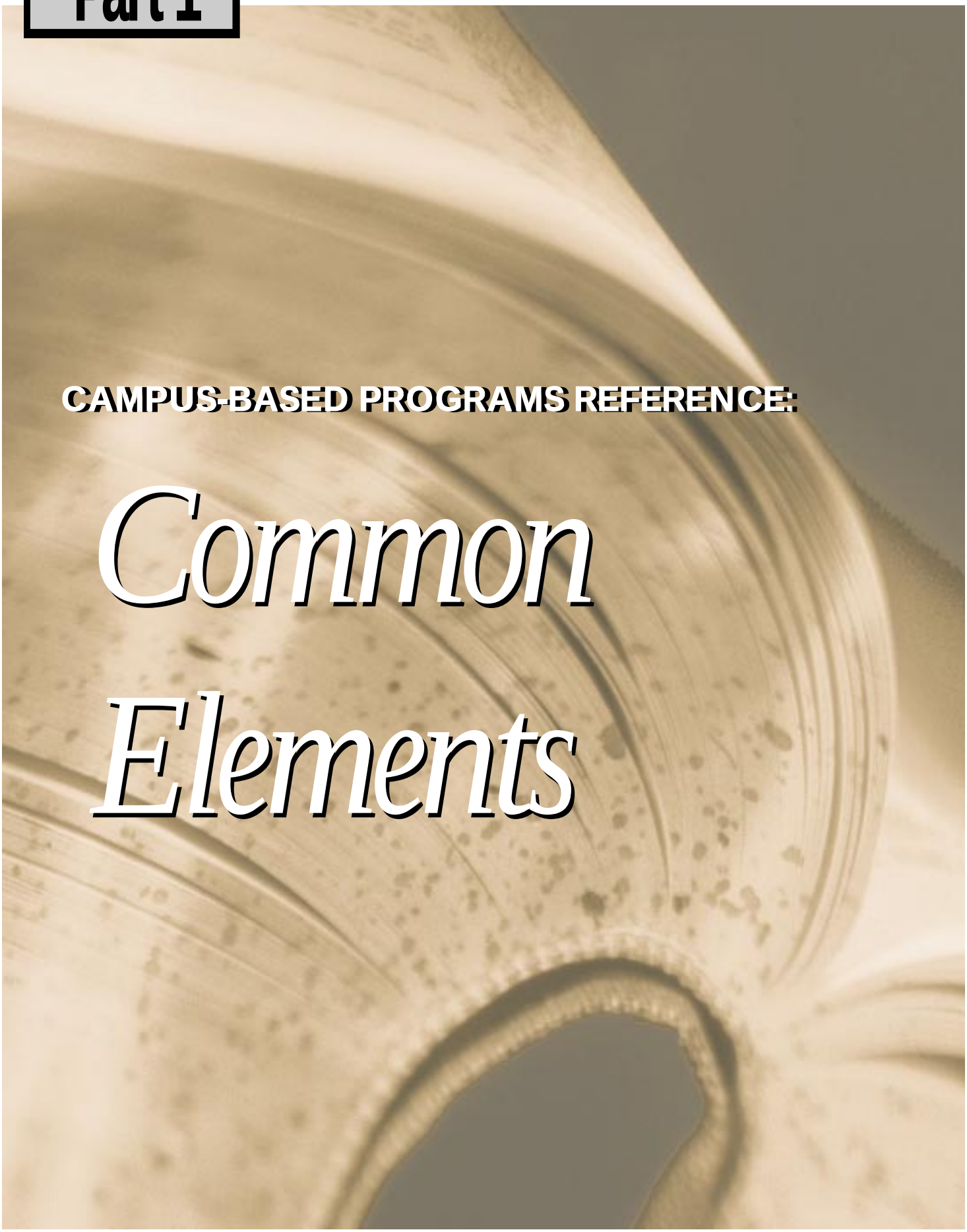
Part 1



CAMPUS-BASED PROGRAMS REFERENCE:

Common Elements

Part 1: Campus-Based Programs Common Elements Contents

Introduction

The Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) programs are called "campus-based" programs because each school is responsible for administering them on its own campus.

A school applies for and receives program funds directly from the U.S. Department of Education by submitting an application, the *Fiscal Operations Report and Application to Participate* (FISAP), each award year. (See page 1-2) The school's financial aid administrator is responsible for ensuring that eligible students at the school receive program funds according to the provisions of the law, the regulations, the Program Participation Agreement (PPA) signed by both the Secretary of Education and the school's chief administrative officer, and other criteria the Department may establish. This Part covers provisions common to the Perkins Loan, FSEOG, and FWS programs. The following three Parts discuss these programs individually. For a description of each program, see the Introduction to the program's respective Part of this Reference.

RECENT CHANGES

Section 492 of the Higher Education Act requires the Department to obtain input from the financial aid community in the development of proposed regulations for the SFA Programs. The Department is obtaining this input through regional meetings and through a process called "negotiated rulemaking." In negotiated rulemaking, the Department meets with representatives of many areas of the financial aid community, such as students, schools, and guaranty agencies, to obtain advice and recommendations for effective implementation through regulation of SFA Program requirements. Most of the new statutory provisions of the Amendments of 1998, Public Law 105-244 (the Amendments of 1998) are subject to the requirements of the negotiated rulemaking process.

At the time this Handbook goes to print, the Department is in the middle of that process. As a result, guidance for implementation of these provisions of the Amendments of 1998 is under discussion and is not available for this publication. Interim guidance may be issued on the Department's "Information for Financial Aid Professionals" web site after these provisions are discussed further with the higher education community during the negotiated rulemaking process. This

publication does contain summaries of the provisions of the Amendments of 1998 that affect institutional eligibility and participation in the SFA Programs. These items are marked by the following symbol:

The following changes are common to all three campus-based programs and result from the Higher Education Amendments of 1998:

- Effective October 1, 1998, a school is required to offer a **reasonable proportion** of its FSEOG allocation, its FWS allocation, and the dollar amount of the loans made from its Perkins revolving fund to independent or less-than-full-time students. Previously, a school was required to offer such students at least 5 percent of the funds if the school's FSEOG allocation, FWS authorization, or Federal Perkins Loan federal capital contribution (FCC) was directly or indirectly based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeded 5 percent of the total need of all students at the school.

- Starting with the 2000-01 award year, the allocation formula changes. Under the new formula,

  Δ the base is equal to the total of the base guarantee plus the pro rata share received for the 1999-2000 award year,
  Δ the pro rata share is eliminated, and
  Δ the fair share calculation is based on all the excess funds after the base guarantees are met.

For recent changes specific to each campus-based program, see the Part of this Reference specific to that program.

PROGRAM PARTICIPATION AGREEMENT

A school that wants to participate in any Student Financial Assistance (SFA) program must sign a PPA with the Department. The school official legally authorized to assume, on the school's behalf, the agreement's obligations must sign the agreement. (For more information on this agreement, see *SFA Handbook: Institutional Eligibility and Participation*.)

The agreement provides that the school must use the funds it receives for a program solely for the purposes specified in the regulations for that program and that the school must administer each program in accordance with the Higher Education Act (HEA) of 1965, as amended, and the General Provisions regulations. See *SFA Handbook: Institutional Eligibility and Participation* for information on the

General Provisions. Each of the campus-based programs has additional requirements that are part of the PPA and that are specific to the individual program; these requirements are found in the regulations for each program and in the HEA. Each program's specific requirements are discussed in that program's respective Part of this Reference.

APPLICATION FOR FUNDS

To receive funds from the Department for one or more of the campus-based programs, a school must submit a FISAP each award year. All schools are required to file the FISAP data through the electronic FISAP process. The Department no longer provides or accepts paper, diskette, or magnetic tape FISAP forms. Thus, a school must use the TIV WAN electronic FISAP transmission process through the TIV WAN using EDExpress to be eligible to participate (request/receive a funding allocation) in the campus-based programs.

Each July, the Department makes available through the TIV WAN the electronic FISAP for schools to use in applying for funds for the subsequent award year. The information reported must be accurate and verifiable. In July 1999, the Department will distribute to schools the materials essential for preparing the *1998-99 Fiscal Operations Report and 2000-01 Application to Participate*. The deadline for transmitting the completed FISAP to the Department over the TIV WAN is October 1, 1999.

A school that has applied to participate in the campus-based programs for the first time should submit a FISAP by the deadline even if the school has not been certified to participate in the programs. The Department will calculate a funding level for the school and put the funding on "hold" status until the school has been approved to participate. See page 1-13 for information on whom to contact if you have questions about the FISAP.

ALLOCATION OF FUNDS

The Department allocates funds directly to schools according to the statutory formulas. The allocation (or authorization) for each program is the amount of funding the school is authorized to receive from the Department for an award year. This amount is based on the allocation formulas in the law as well as on the funds appropriated by Congress for the program. A school will not, however, receive an allocation that is in excess of its request.

The Department notifies schools of their final allocation for each campus-based program in late March each year by sending *The Official Notice of Funding*.

If a school does not use its total allocation of funds for campus-based programs, the school must release unexpended amounts to the Department. In June each year, the Department sends schools a Dear Colleague Letter advising them that they must release funds not spent

by June 30 of that year and asking them to estimate the amount of funds they expect to have used by that date. Later, a school also must determine the actual amounts spent as of the end of the award year and report those amounts on the Department of Education's Central Automated Processing System (EDCAPS).

If a school returns more than 10 percent of its allocated funds for a given award year under any one of the campus-based programs, the Department will reduce the school's allocation for the second succeeding award year by the dollar amount returned unless the Department waives this provision. For example, if the school returns more than 10 percent of its 1998-99 allocation, its 2000-01 allocation will be reduced by the dollar amount returned for 1998-99.

The Department may waive this provision for a specific school if it finds that enforcement would be contrary to the interests of the program. The Department considers enforcement to be contrary to the interest of the program only if the school returned more than 10 percent of its allocation due to circumstances that are beyond the school's control and are not expected to recur. To request a waiver, a school must submit a written explanation of the circumstances along with supporting documentation. By February 2000, the Department will issue a Dear Colleague Letter explaining the process a school must use to request a waiver for the 2000-01 award year.

After schools release their unexpended allocations, the Department reallocates the funds to schools that have met the criteria for receiving a supplemental allocation. Criteria for distributing these funds for each program are established in accordance with the HEA and the campus-based program regulations.

CERTIFICATIONS A SCHOOL MUST SUBMIT TO THE DEPARTMENT

Included in the FISAP package the Department distributes to schools annually is the Department Form 80-0013, *Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements* and Standard Form LLL, *Disclosure of Lobbying Activities.* To participate in the campus-based programs each award year, a school's chief executive officer, or another person who has the authority to sign on behalf of the entire school, is required to complete, sign, date, and submit to the Department the above certification forms with the school's completed FISAP by the established deadline. A detailed discussion of the certification requirements is in *SFA Handbook: Institutional Eligibility and Participation*.

Selecting Recipients

PART 1
Chapter 1

GENERAL ELIGIBILITY REQUIREMENTS

General Eligibility Requirements
SFA Handbook: Student Eligibility *and 34 CFR 668.32.*

All students receiving campus-based aid must meet the general eligibility requirements listed in *SFA Handbook: Student Eligibility.* Additional student eligibility requirements under each campus-based program are discussed in Parts 2 through 4 of this Reference.

A student enrolled as an undergraduate, graduate, or professional student is eligible to receive assistance from the Federal Perkins Loan and Federal Work-Study (FWS) programs. Only undergraduate students are eligible to receive Federal Supplemental Educational Opportunity Grants (FSEOGs).

In choosing aid recipients, a school must develop written selection procedures that are uniformly applied and that are kept on file at the school. A school must make campus-based funds reasonably available—to the extent of available funds—to all eligible students who demonstrate financial need. (Two of the campus-based programs, the Federal Perkins Loan and FSEOG programs, require eligible students to have **exceptional** financial need.) A school is reminded that no payment of a campus-based award can be made if the student did not receive an official Expected Family Contribution (EFC).

FURTHER UNDERGRADUATE DEGREE

A student who has earned a bachelor's or first professional degree is eligible to receive aid from the Federal Perkins Loan or FWS program to pursue an **additional** undergraduate degree. However, a student who has earned a bachelor's or first professional degree is **not** eligible to receive an FSEOG to pursue another undergraduate degree.

TEACHER CERTIFICATION PROGRAMS

A school may award a Federal Perkins Loan and/or FWS to a student who is enrolled or accepted for enrollment at an eligible school on at least a half-time basis in a program that is required by a

state for a professional credential or certificate for employment as an elementary or secondary teacher in that state. A student is not allowed to receive aid to cover optional courses that he or she may elect to take for professional recognition or advancement or additional optional courses recommended or required by the school. The school should document that the courses the student enrolls in are required by the state for teacher certification.

A student enrolled in a teacher certification program may be considered either an undergraduate or graduate student, depending on the school's policy. That decision is left to the school. Information about Perkins Loan limits for students in teacher certification programs is included in Part 2 of this Reference.

LESS-THAN-FULL-TIME AND INDEPENDENT STUDENTS

Effective October 1, 1998, a school is required to offer a **reasonable proportion** of its FSEOG allocation, its FWS allocation, and the dollar amount of the loans made from its Perkins revolving fund to independent or less-than-full-time students. Previously, a school was required to offer such students at least 5 percent of the funds if the school's FSEOG allocation, FWS authorization, or Federal Perkins Loan federal capital contribution (FCC) was directly or indirectly based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeded 5 percent of the total need of all students at the school.

Part-time students include correspondence students. To be considered enrolled in a program of correspondence study, the student must be enrolled in a degree-seeking program and must have completed and submitted the first lesson. A school must offer a **reasonable proportion** of its FSEOG allocation, its FWS allocation, and the dollar amount of the loans made from its Perkins revolving fund to part-time students on its eligible branch campuses as well as to part-time students on the home campus.

SPECIAL SESSIONS

A student who enrolls as a regular student in an eligible program during a special session, such as summer school, may receive campus-based aid if he or she meets the same general eligibility requirements that apply to a student enrolled in a regular session. If a student is **not** enrolled during the special session, the student is not eligible to receive campus-based aid during the period of **nonattendance**, except in the case of an FWS job, which may be awarded only if the student attended the school during the preceding term or has been accepted by the school for the subsequent term. (See Part 3 of this Reference.)

Awarding Campus-Based Aid

PART 1 Chapter 2

NEED-ANALYSIS FORMULAS

The Higher Education Act of 1965 (HEA), as amended, provides a single methodology for determining the Expected Family Contribution (EFC) and cost of attendance (COA) for all Student Financial Assistance (SFA) programs. Need-analysis and COA are discussed in *SFA Handbook: Student Eligibility.* If the student's COA exceeds his or her EFC, the student has need.

Before awarding aid from campus-based programs, the financial aid administrator must take into account aid the student will receive from other SFA Programs. The administrator must also take into account other resources that the school makes available to its students, resources about which he or she knows, or resources that the administrator can reasonably anticipate at the time aid is awarded to the student. An aid administrator may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need.

If, **at any time during the award period**, the student receives additional resources that were not considered in calculating the student's eligibility for campus-based aid and if these resources combined with the expected financial aid will exceed the student's need, the amount in excess of the student's need is considered an overaward.

Maximum Campus-Based Aid Calculation

Maximum Campus-Based aid
= *Financial need*
- *Aid from Other SFA programs & resources*

Consolidated Overaward Provisions

34 CFR 673.5

RESOURCES

Resources, as defined by the campus-based regulations, include but are not limited to

- funds a student is entitled to receive from a Federal Pell Grant,
- William D. Ford Federal Direct Loans (Direct Loans),
- Federal Family Education Loans (FFELs),

- long-term loans made by the school, including Federal Perkins Loans (short-term emergency loans are not considered to be a resource),
- grants, including Federal Supplemental Educational Opportunity Grants (FSEOGs), state grants, and ROTC living allowances,
- scholarships, including athletic scholarships and ROTC scholarships,
- waivers of tuition and fees,
- fellowships or assistantships,
- veterans educational benefits,
- income from insurance programs that pay for the student's education, and
- net income from need-based employment.

To determine the net amount of a student's Federal Work-Study (FWS) earnings that will be available to help pay for his or her COA, the school must subtract estimated taxes and job-related costs from the student's gross FWS earnings (see Part 3 of this Reference). Any portion of the above resources that is included in the calculation of the student's EFC is not considered to be a resource.

The school may treat a Federal PLUS Loan, Direct PLUS Loan, unsubsidized Federal Stafford Loan, Direct Unsubsidized Loan, state-sponsored loan, or a private loan as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

In the above list of resources, the term "need-based employment" means employment that is awarded by the school itself or by another entity to a student who demonstrates a financial need for those funds for the purpose of defraying educational costs of attendance for the award year. Only income from **need-based** employment may be considered as a resource.

Non-need-based earnings are not to be considered as a resource for the current award year because they will be reported as income on the *Free Application for Federal Student Aid* (FAFSA) for the subsequent award year and will be used to calculate the EFC for that award year.

Veterans **educational** benefits are not included in the EFC formulas; therefore, these benefits must be treated as a resource when determining the amount of a student's financial need from the campus-based programs and must be treated as estimated financial assistance in the FFEL Program and the Direct Loan Program. The

veterans educational benefits to be treated as a resource / estimated financial assistance are listed in *SFA Handbook: Student Eligibility*.

Noneducational veterans benefits are not counted as a resource or estimated financial assistance, as they are already counted in the EFC formula as nontaxable income. Noneducational veterans benefits include Death Pension and Dependency and Indemnity Compensation (DIC) benefits.

OVERAWARDS

A financial aid administrator may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need. If a student who has already been awarded a financial aid package later receives additional resources that cause his or her financial aid package to exceed his or her need, the amount in excess of the student's need is considered an overaward. There is now a $300 overaward threshold for all campus-based programs. The $300 threshold is allowed only if an overaward occurs after campus-based aid has been packaged. The threshold does not allow a school to deliberately award campus-based aid that, in combination with other resources, exceeds the student's financial need.

STEPS TO TAKE IF THE RESOURCES EXCEED NEED

If a school learns that a student has received additional resources that were not included in calculating the student's eligibility for aid from the Perkins Loan, FWS, or FSEOG Program that would result in the student's total resources exceeding his or her financial need by more than $300, the school must take the following steps:

1 If the student's aid package includes a loan under the FFEL or Direct Loan Program, the school must first follow the overaward requirements that are presented in *SFA Handbook: Direct Loan and FFEL Programs Reference*. Also, a school may attempt to reduce or eliminate the overaward by changing the function of an unsubsidized loan (a Stafford Loan, a nonfederal loan, or the parents' PLUS Loan) from covering need to replacing the EFC.

2 If there is no FFEL or Direct Loan in the student's aid package or if the school eliminates the FFEL or Direct Loan overaward and if, in either case, the student's total resources still exceed the student's need by more than $300, the school must recalculate the student's need to determine whether he or she has increased need that was not anticipated when the school awarded aid to the student. If the student's need has increased and if the total resources do not exceed the increased need by more than $300, the school is not required to take any additional action.

3 If the school recalculates the student's need and determines that the student's need has **not** increased or that his or her need has increased but that the total resources still exceed his or her need by more than $300, the school must cancel any loan or grant (other than a Pell Grant) that has not already been disbursed.

4 If the student's total resources still exceed his or her need by more than $300 and his or her resources include a Perkins Loan and/or FSEOG, the amount that exceeds the student's need by more than $300 is a Perkins Loan or FSEOG overpayment.

For a student employed under the FWS Program, if the school recalculates the student's need and determines that the student's need has increased and if the total resources do not exceed that increased need by more than $300, the school may use FWS funds to pay the student until the FWS award has been earned or until the student's increased need has been met. In addition, the school may continue employing the student under FWS after the full amount of the FWS award has been earned and the student's financial need has been met; however, the school may pay the student with FWS funds only up to the time the income from **need-based** employment exceeds the student's financial need by more than $300. At that point, FWS funds may no longer be used to pay the student. The school may continue to employ the student, but funds other than FWS funds must be used to pay the wages.

OVERPAYMENTS

A student is liable for any overpayment of a Perkins Loan or FSEOG; the school is also liable for any overpayment that was caused by the failure of the school to follow the procedures in 34 CFR Part 668, Part 673, Part 674, Part 675, or Part 676. If the school makes a Perkins Loan or FSEOG overpayment for which it is liable, it must restore an amount equal to the overpayment plus any administrative cost allowance claimed on that amount to its Perkins Loan fund for a Perkins Loan overpayment or to its FSEOG account for an FSEOG overpayment.

If the school makes an overpayment of Perkins Loan advances or FSEOG for which it is not liable (for example, when a student has made a mistake on the application), the school must promptly attempt to recover the overpayment by sending a written notice to the student requesting the repayment of the amount of the overpayment. The notice must state that, if the student fails to repay the overpayment, or fails to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, the student is ineligible for additional SFA funds until final resolution of the overpayment.

If a student claims that the school has made a mistake in determining the Perkins Loan or FSEOG overpayment, the school must consider any information provided by the student and determine whether the objection is warranted.

If the school made an FSEOG overpayment for which it is not liable, and the federal share of an FSEOG overpayment is $25 **or more,** the school may be required to refer the overpayment to the U.S. Department of Education for collection. A school must refer the FSEOG overpayment case to the Department's Student Receivables Division for collection if all of the following conditions apply to the overpayment:

- the school has sent the required notice to recover the overpayment,
- the school determines that the student's objection (if any) is not warranted,
- either the school has failed to collect the FSEOG overpayment or the student has failed to make arrangements satisfactory to the school to repay the overpayment, **and**
- the federal share of an FSEOG overpayment is $25 **or more**.

If the school is required to refer the FSEOG overpayment to the Department for collection, the school must identify the Federal share of the overpayment; the student's name, most recent address, and telephone number; and other relevant information. See the *SFA Handbook: Student Eligibility* for additional information. After referring the overpayment case to the Department for collection, the school is not required to make any further attempt to collect the FSEOG overpayment. If the school is unable to collect the overpayment and the federal share is **less than** $25, the school is not required to make any further attempt to collect the overpayment.

COORDINATION WITH BUREAU OF INDIAN AFFAIRS GRANTS

Coordination with BIA Grants
34 CFR 673.6

To determine the amount of campus-based aid for a student who is or may be eligible for a BIA grant, a school must first develop a financial aid package without considering any BIA funds. If the total aid package—after BIA funds are added—does not exceed the student's need, no adjustment may be made to the aid package. If the total package plus the BIA grant does exceed need, the school must eliminate the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. (The school may **not** reduce a Pell Grant or BIA grant.) The school may alter this sequence of reductions upon the student's request if the school believes the change would benefit the student. In determining the amount of financial need for a student eligible for a BIA grant, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

Fiscal Procedures & Record Requirements

PART 1 Chapter 3

For information on general fiscal procedures and records requirements for all Student Financial Assistance (SFA) programs, refer to SFA Handbook: Institutional Eligibility and Participation, *the current edition of the* Blue Book, *and 34 CFR 668. Additional fiscal procedures required for each campus-based program are discussed in its Part of this Reference.*

FISCAL OPERATIONS REPORT

FISAP Requirement
34 CFR 673.3

As discussed in the Introduction to this Part, a school must submit an application (*Fiscal Operations Report and Application to Participate* [FISAP]) for each award year to receive federal funds under the campus-based programs. The school uses the Fiscal Operations Report portion of the FISAP to report its expenditures under the campus-based programs in the previous award year. All schools are required to file the FISAP data through the Title IV Wide Area Network (TIV WAN) electronic FISAP process using EDExpress Windows software.

Each July, the U.S. Department of Education makes available through the TIV WAN the electronic FISAP for schools to use in applying for funds for the subsequent award year and in reporting expenditures for the previous award year. Materials essential for the preparation and submission of the *1998-99 Fiscal Operations Report and 2000-01 Application to Participate* will be distributed to schools in July 1999. A school that sends the FISAP to the Department by the October 1, 1999 deadline will receive its tentative 2000-01 funding notifications in a Dear Colleague letter in early 2000. Final 2000-01 funding notifications will be sent to schools in March 2000.

In July 1999, the Department will make available through the TIV WAN the FISAP packages schools must complete to apply for funds for the 2000-01 award year. Questions concerning the preparation of the FISAP should be referred to the appropriate campus-based state representative under the Department's Student Financial Assistance Programs, Accounting and Financial Management Service, Institutional Financial Management Division. You can find your specialist's name in the list that follows, along with his or her telephone number and the states that he or she covers. An alternate, and his or her telephone number are listed in parentheses underneath the main specialist. You may also reach these specialists or alternates by fax at 202/260-0522 or 202/401-0387. If you have trouble reaching either your specialist or the alternate, you may call 202/708-7741.

Campus-Based Programs Financial Management Specialists
Institutional Financial Management Division

Name (Alternate)	*Telephone Number (Alternate)*	*States Covered*
Vicki Roberson (Dinah Nelson)	202/708-7747 (202/708-8759)	● Louisiana, Maine, Maryland, Michigan, Massachusetts, Minnesota, and Montana
Dinah Nelson (Vicki Roberson)	202/708-8759 (202/708-7747)	● Florida, Mississippi, Ohio, and Pennsylvania
Carolyn Short (Carol Franklin-Jones)	202/708-9184 (202/708-9183)	● Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Puerto Rico, Utah, and Virgin Islands
Carol Franklin-Jones (Carolyn Short)	202/708-9183 (202/708-9184)	● Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Kentucky, Rhode Island, and Vermont
Rhonda Herbert (Jim Porter)	202/708-9191 (202/708-7752)	● Arkansas, District of Columbia, Hawaii, Tennessee, Texas, Virginia, and the Pacific Islands—American Samoa, Guam, Republic of Palau, Republic of the Marshall Islands, Northern Marianas, and the Federated States of Micronesia
Joseph Morris (Alice Payne)	202/708-8745 (202/708-9754)	● Idaho, Illinois, Indiana, Iowa, Kansas, and Missouri
Alice Payne (Joseph Morris)	202/708-9754 (202/708-8745)	● California and South Carolina
Jim Porter (Rhonda Herbert)	202/708-7752 (202/708-9191)	● North Carolina, North Dakota,Oregon, South Dakota, Washington, West Virginia, Wisconsin, and Wyoming
Mary Hubbard (Rhonda Herbert)	202/708-9230 (202/708-9191)	● Oklahoma

Questions about the data entry or EDExpress software should be referred to Central Processing System (CPS) Customer Service on 800/330-5947. Questions about the electronic transmission process should be referred to TIV WAN Customer Service on 800/615-1189. Questions about prior-year data listed on a FISAP should be referred to a FISAP Administrator on 301/565-0032 or 202/708-6726.

FISCAL PROCEDURES

A school must disburse SFA program funds on a payment period basis, with the exception of FWS payments to students. Cash management requirements that apply to all SFA programs are discussed in detail in *SFA Handbook: Institutional Eligibility and Participation*. The cash management requirements that apply specifically to each campus-based program are discussed in that program's Part of this Reference.

CAMPUS-BASED PROGRAM RECORDS

A school must keep financial records that reflect all campus-based program transactions and must keep all records supporting the school's application for campus-based funds. This documentation includes the applications and records of all students who applied for campus-based assistance for a specific award year and were included on the school's FISAP for that award year. The school must also retain applications and records of students who applied for but did not receive aid either because the school had no more funds to award or because the school determined that the student did not need funds. The school must keep general ledger control accounts and related accounts that identify each program transaction and must separate those transactions from all other institutional financial activity. Fiscal records must be reconciled at least monthly.

Recordkeeping requirements as they apply in general to all SFA programs are discussed in *SFA Handbook: Institutional Eligibility and Participation*. In addition to meeting those requirements, a school must meet certain campus-based program recordkeeping requirements.

The campus-based records a school must maintain include but are not limited to

- the *Student Aid Report* (SAR) or *Institutional Student Information Record* (ISIR) used to determine a student's eligibility for campus-based program funds;
- application data submitted to the Department or the school on behalf of the student;
- documentation of each student's eligibility for campus-based program funds;
- documentation of the amount of a Perkins Loan, FSEOG or FWS award, its payment period, and the calculations used to determine the amount of the loan, grant, or FWS award;
- documentation of each FSEOG or Perkins Loan disbursement and the date and amount of each payment of FWS wages;
- documentation of the school's calculation of any refunds or overpayments due to or on behalf of the student and the amount, date, and basis of the school's calculation;
- documentation of the payment of any refund or overpayment to the SFA program fund or the Department;
- information collected at initial and exit loan counseling required by Perkins Loan regulations; and
- reports and forms used by the school in its participation in a campus-based program, and any records needed to verify data that appear in those reports and forms.

Perkins Loan Repayment Records
34 CFR 674.19(e)(3)

For each Perkins Loan borrower, a school must maintain a repayment history. See Part 2 of this Reference for more information.

Records Under Question
34 CFR 668.24(e)(3)

A school must also follow the procedures established in 34 CFR 675.19 for documenting a student's FWS work, earnings, and payroll transactions. These procedures are discussed in Part 3 o f this Reference.

Records Necessary to Enforce Loan Collection
34 CFR 674.19(e)(4)

Generally, a school must keep records relating to the school's administration of a campus-based program or the Pell Grant Program for three years after the end of an award year for which the aid was awarded and disbursed under that program, with these exceptions:

Format of Records
34 CFR 668.24(d)

- The school must keep the FISAP in the Perkins Loan, FSEOG, and FWS programs and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted.

- The school must keep repayment records for Perkins Loans, including records relating to cancellation and deferment requests for at least three years from the date a loan is assigned to the Department, canceled, or repaid.

- Records questioned in an audit or program review must be kept until the questions are resolved or until the end of the retention period applicable to the records, whichever is later.

A school must keep its campus-based program records in one of the following formats:

- Original signed promissory notes and signed repayment schedules for Perkins Loans, National Direct Student Loans (NDSLs), or National Defense Student Loans (Defense Loans) must be kept in a locked fireproof container until the loan is repaid or until the school needs the originals in order to enforce collection of the loan. If a loan is assigned to the Department, the school must send the original promissory note or a certified copy of the note, as well as a copy of the original deferment or cancellation form(s). The school may not send computer-generated form(s) or microform(s). (Refer to Part 2 of this Reference.)

- A school may keep other required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, but all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Department except that

  Δ a student's SAR or ISIR used to determine eligibility for SFA program funds must be kept in the format in which the school received it, except that the SAR may be kept in an "imaged media format;" and

Δ any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be kept in its original hard copy or in an imaged media format.

- Any "imaged media format" used to keep required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original.

ADMINISTRATIVE COST ALLOWANCE

A school participating in the campus-based programs is entitled to an allowance to help offset administrative costs, such as salaries, furniture, travel, supplies, and equipment. The allowance can also be used for service fees that banks charge for maintaining accounts. Computer costs associated with Perkins Loan billing may also be paid from this allowance. Schools may use the allowance to help pay the costs of administering not only the campus-based programs but the Federal Pell Grant Program as well. Administrative costs also cover expenses for carrying out the student consumer information services requirements.

A school may use up to 10 percent of the administrative cost allowance attributable to the school's FWS Program expenditures to offset expenses incurred for its community service program.

Each school's administrative cost allowance is based on its expenditures for all three programs, **excluding** the amount of Perkins Loans assigned to the Department.

When a school calculates its administrative cost allowance for the 1999-2000 award year, the school is to include in its calculation the full amount of its FSEOG awards—both the 75-percent federal share and the required 25-percent nonfederal share. However, a school that chooses to provide more than a 25-percent institutional share to FSEOG recipients may not include an FSEOG institutional share in excess of 25-percent in its FISAP or in the calculation of its administrative cost allowance. If the Department has granted a school a waiver of its required institutional share for the FSEOG Program or the FWS Program, that school's administrative cost allowance may be calculated only on the full federal portion of its awards for those programs.

FISAP Calculation

5% of the first $2,750,000 of a school's expenditures under the campus-based programs

+

4% of expenditures greater than $2,750,000 but less than $5,500,000 under the campus-based programs

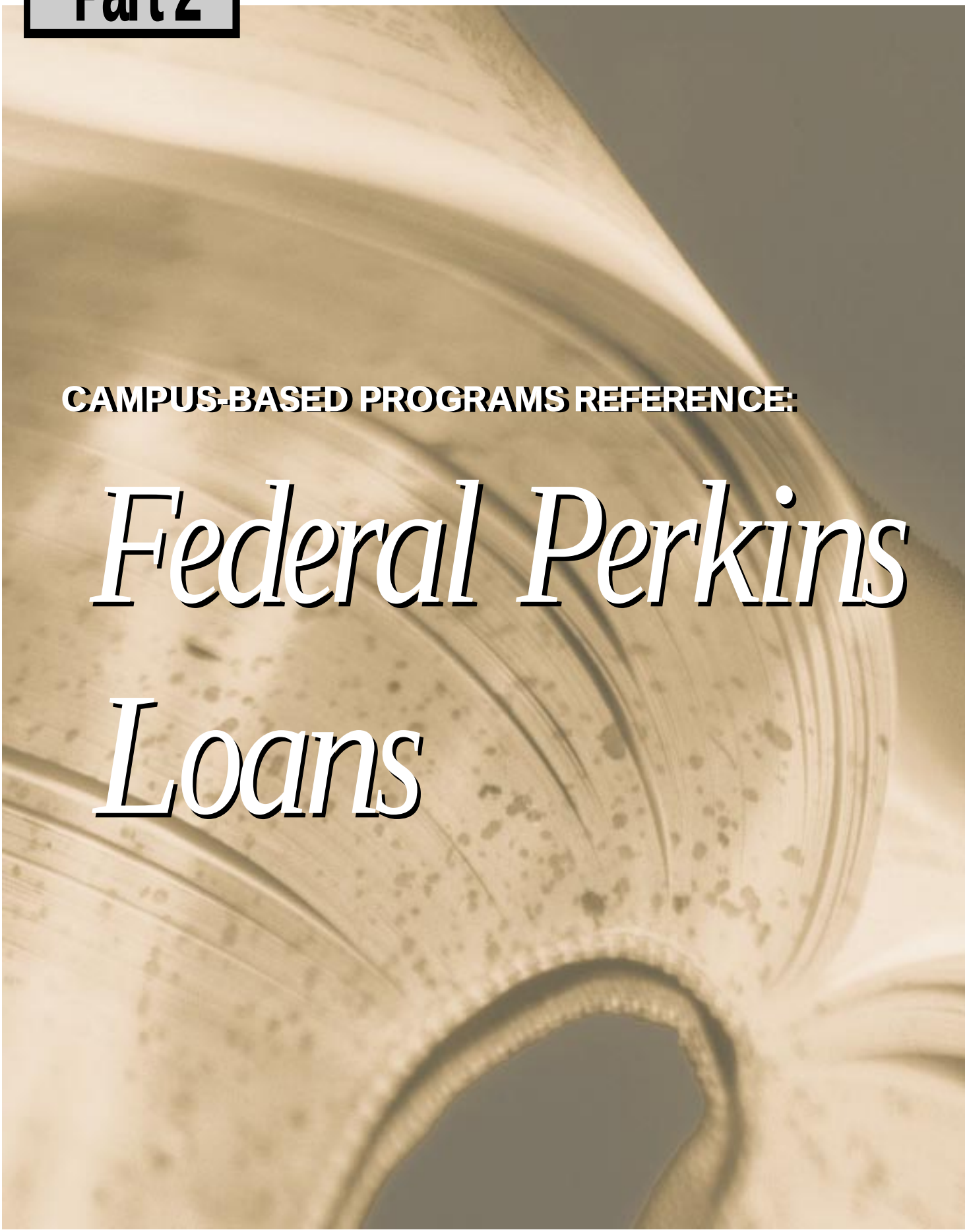
+

3% of expenditures greater than $5,500,000 under the campus-based programs

The school takes the administrative cost allowance out of the annual authorizations the school receives for the FSEOG and FWS programs and from the available cash on hand in its Perkins Loan fund. It is not a separate allowance sent to the school. A school may draw its allowance from any combination of campus-based programs, or it may take the total allowance from only one program provided there are sufficient funds in that program. However, a school may not draw any part of its allowance from a campus-based program unless the school has disbursed funds to students from that program during the award year.

If a school charges any administrative cost allowance against its Perkins Loan fund, it must charge these costs during the same award year in which the expenditures for these costs were made.

Part 2



CAMPUS-BASED PROGRAMS REFERENCE:

Federal Perkins Loans

Part 2: Federal Perkins Loan Program Contents

Introduction

The Federal Perkins Loan Program comprises Federal Perkins Loans, National Direct Student Loans (NDSLs), and National Defense Student Loans (Defense Loans). (No new Defense Loans were made after July 1, 1972, but a few are still in repayment.) Perkins Loans and NDSLs are low-interest (currently 5 percent), long-term loans made through school financial aid offices to help needy undergraduate and graduate students pay for postsecondary education.

LOAN TYPES

Loans made before July 1, 1972 were Defense Loans. Loans made from July 1, 1972 through June 30, 1987 were NDSLs. A loan made on or after July 1, 1987 may be either an NDSL or a Perkins Loan. If the borrower has an outstanding balance on a Defense Loan or NDSL when the new loan is obtained, the new loan is an NDSL. If the borrower has no outstanding balance on a Defense Loan or NDSL when the new loan is obtained, the new loan is a Perkins Loan.

RECENT CHANGES

The following changes result from the Higher Education Amendments of 1998. Unless otherwise stated, these changes became effective October 1, 1998.

Cohort Default Rate Changes

- A school may no longer exclude from its cohort default rate improperly serviced loans.

- Excluded from a school's cohort default rate is any borrower who

  - Δ voluntarily makes six consecutive payments,
  - Δ voluntarily makes all payments due,
  - Δ repays the loan in full,
  - Δ receives a deferment or forbearance that predates the 240/270-day past due status,
  - Δ rehabilitates or cancels the loan, or
  - Δ satisfies conditions determined by the Department.

- For years preceding fiscal year (FY) 2000, current default penalties remain in place, except that a school with a default rate of less than 20 percent and less than 100 students with loans for that academic year are is exempt from default reduction plan filing requirements.

- For FY 2000 and succeeding fiscal years, a school with a cohort default rate of 25 percent or more will have a default penalty of zero.

- For FY 2000 and succeeding fiscal years, no school is required to file a default reduction plan.

- For FY 2000 and succeeding fiscal years, a school with a cohort default rate of 50 percent or more for the three most recent years is ineligible to participate in the 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.

Loan Limit Changes

- The Expanded Lending Option (ELO) is eliminated.

- Annual loan limits are increased to $4,000 for undergraduate students and $6,000 for graduate students.

- Aggregate loan limits are increased to $20,000 for undergraduate students who have completed two academic years and are pursuing bachelor's degrees and $40,000 for graduate students.

- The term "aggregate loan limit" has been redefined to now include only the borrower's unpaid principal.

Defaulted Borrower Changes

- A borrower who satisfies any of the conditions that remove his or her loan from the school's cohort default rate becomes eligible for additional Perkins Loans.

- A defaulted borrower who makes six on-time, consecutive monthly payments of amounts owed on the loan regains SFA eligibility, provided that he or she meets all other eligibility criteria. A borrower may obtain this benefit only once. Previously, under 34 CFR 674.5(e), a defaulted borrower was considered to have made satisfactory repayment arrangements (and thus regained SFA eligibility) once he or she had signed a new repayment agreement and made six on-time, consecutive monthly payments.

- A defaulted loan on which the borrower makes 12 consecutive on-time monthly payments (as determined by the loan holder) is considered rehabilitated (no longer in default). A borrower may receive this benefit only once. The loan holder must report the rehabilitation to a credit bureau, and the borrower reestablishes SFA eligibility. A borrower may rehabilitate a loan only once.

Credit Bureau Reporting Changes

- A school must still report loan information to credit bureaus but is no longer required to report to credit bureaus with which the Department has agreements. A school may now establish its own agreements with credit bureaus and report loan information to those bureaus.

- A school is now required to promptly disclose any changes to information previously reported to credit bureaus.

- When a defaulted borrower makes six consecutive, on-time monthly payments, a school is now required to report this information to credit bureaus.

- The Department is authorized to establish criteria under which a school may cease credit bureau reporting.

- The seven-year credit bureau reporting limit is eliminated. A credit bureau may now report on a loan until it is paid in full.

Grace Period, Deferment, Cancellation, and Discharge Changes

- Any period of at least 30 days during which a borrower who is a member of the Armed Forces reserve is called or ordered to active duty is excluded from his or her initial grace period. Any such period excluded from a borrower's grace period cannot exceed 3 years.

- Effective October 7, 1998, regardless of the terms of the borrower's promissory note, all borrowers may receive the Federal Perkins Loan deferments listed in Section 464(c)(2)(A) of the law. This change extends to all loans made under this program deferment provisions previously available only on Perkins Loans and NDSLs made on or after July 1, 1993.

- A Federal 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. A defaulted borrower whose loan is discharged under this closed school provision is eligible for additional SFA funds, provided that he or she meets all other eligibility criteria. The loan holder must report to credit bureaus that the loan has been discharged.

- Effective October 7, 1998, regardless of the terms of the borrower's promissory note, all borrowers may receive the Federal Perkins Loan cancellations listed in Section 465(a)(2) of the law. This change extends to all loans made under this program deferment provisions previously available only on certain Perkins Loans and NDSLs.

- The Department is required, to the extent feasible, to reimburse a school for canceled loans no later than three months after the school files for reimbursement.

Other Changes

- A school is now required to offer a reasonable proportion of the dollar amount of the loans made from its Perkins Loan revolving fund to independent or less-than-full-time students. Previously, a school was required to offer at least 5 percent of the dollar amount of loans made under the Perkins Loan Program to these students if the school's Federal Capital Contribution (FCC) was partly based on the financial need of these students and the financial need of these students exceeded 5 percent of the total financial need of all students at the school.

- Effective October 7, 1998, the Department no longer has the authority to establish a Perkins Loan Revolving Fund and requires the transfer and deposit of amounts in the Department's Revolving Fund in the U.S. Treasury.

- Under a new Incentive Repayment Program, a school, with the Department's approval, may

  Δ reduce a loan's interest rate by up to 1 percent if the borrower makes 48 consecutive monthly payments
  Δ discount by up to 5 percent the balance a borrower owes on a loan if he or she pays the loan in full before the end of the repayment period
  Δ establish any other repayment incentive options that reduce default and replenish student loan funds.

  A school may not use federal funds or institutional funds from the Perkins Loan revolving fund to pay for any Incentive Repayment Program.

- Starting with the 2000-2001 award year, the allocation formula changes. Under the new formula,

  Δ the base is equal to the total of the base guarantee plus the pro rata share received for the 1999-2000 award year,
  Δ the pro rata share is eliminated, and
  Δ the fair share calculation is based on all the excess funds after the base guarantees are met.

PARTICIPATION AGREEMENT AND FEDERAL PERKINS LOAN FUND

As discussed in *SFA Handbook: Institutional Eligibility and Participation* and in Part 1 of this Reference, a school that wants to participate in any Student Financial Assistance (SFA) Program must sign a Program Participation Agreement (PPA) with the Secretary. The agreement must be signed by the school official legally authorized to assume, on the school's behalf, the agreement's obligations.

For all of the SFA Programs, the agreement provides that the school must use the funds it receives solely for the purposes specified in the regulations for each program and requires the school to administer each program in accordance with the Higher Education Act of 1965 (HEA), as amended, and the Student Assistance General Provisions regulations. The agreement also requires the school to submit annually to the U.S. Department of Education a report containing information that will enable the Department to determine the school's cohort default rate (discussed in Chapter 7 of this Part).

The agreement for the Perkins Loan Program also requires the school to establish and maintain a Perkins Loan fund (the fund) and to deposit into the fund—

- the Federal Capital Contribution (FCC) the school receives as its federal allocation for the program for each award year (explained later in this Chapter);

- the school's matching share—the institution's capital contribution (ICC), discussed on the next page;

- payments the school receives for repayment of loan principal, interest, collection charges, and penalty or late charges on loans from the fund;

- payments the school receives from the federal government for cancellations (such as teacher cancellations) of Perkins Loans and NDSLs (see Chapter 5 of this Part).

- any other earnings on fund assets, including net interest earnings on funds deposited in an interest-bearing account (total interest minus bank charges incurred on the account); and

- proceeds of any short-term no-interest loans the school makes to the fund in anticipation of receipt of its FCC or of loan collections.

ALLOCATION OF FUNDS—FEDERAL CAPITAL CONTRIBUTION

As discussed in the Introduction to Part 1, a school applies for program funds annually through the electronic *Fiscal Operations Report and Application to Participate* (FISAP). The Department allocates funds directly to schools. The allocation for the Perkins Loan Program, the FCC, is the amount of funding the school is authorized to receive from the Department for an award year. This amount is based on the funds appropriated by Congress for the program, as well as the allocation formulas, which were established by law and which do not provide for appeals.

Basis for Initial Allocation
HEA 462(a)

Basis for Reallocation
34 CFR 673.4(a)

School's Matching Share
34 CFR 674.8

Transfer of Funds to FWS and/or FSEOG
34 CFR 674.18(c)

Reduction of FCC for High Cohort Default Rate
34 CFR 674.5

The following provisions of the HEA and the Perkins Loan Program regulations affect the school's allocation:

- The Department bases the initial allocation of a school's FCC on the amount allocated to the school for the 1985-86 award year. Beginning with the 2000-2001 award year, the Department will base the initial FCC allocation on the amount allocated to the school for the 1999-2000 award year.
- The Department reallocates funds to schools by reallocating 80 percent of the total funds in accordance with the statutory formula in section 462(j) of the HEA and reallocating 20 percent in a manner that best carries out the purposes of the Perkins Loan Program.
- The school's matching share or ICC is one-third of the FCC (or 25 percent of the **combined** FCC and ICC).
- If a school returns more than 10 percent of its FCC, the Department will reduce the school's FCC for the second succeeding year by the dollar amount returned.
- A school may transfer up to a total of 25 percent of its FCC for an award year to either or both the FSEOG and FWS programs.
- A school may transfer up to 100 percent of its initial and supplemental allocations to the Work-Colleges Program.
- A school must match any funds transferred to another program at the matching rate of that program. The school does not have to provide matching funds until the transfer has occurred.
- A school must use the transferred funds according to the requirements of the program to which they are transferred.
- A school must report any funds that are transferred to another program on the Fiscal Operations Report portion of the FISAP.
- A school that transfers funds to the FWS, FSEOG, and/or Work-Colleges programs must transfer any unexpended funds **back** to the Perkins Loan Program at the end of the award year.
- If a school's cohort default rate equals or exceeds 20 percent, the school's FCC will be reduced by a default penalty percentage calculated in relation to the school's cohort default rate. (See Chapter 7 of this Part.)

Student Eligibility

ELIGIBILITY CRITERIA

Both undergraduate and graduate students may receive loans under the Federal Perkins Loan Program. To be eligible for a Perkins Loan, a student must meet the general student eligibility requirements discussed in *SFA Handbook: Student Eligibility* and must not have borrowed the maximum amounts listed in Chapter 2 of this Part. A student who has earned a bachelor's or first professional degree may receive a Perkins Loan to pursue an **additional undergraduate** degree provided that he or she meets the eligibility requirements. A student engaged in a program of study abroad also may be eligible for a Perkins Loan.

An individual who is serving in a medical internship or residency program (with the exception of a dental internship) is not eligible for a Perkins Loan. An individual in a dental internship may receive a Perkins Loan.

An incarcerated student is not eligible to receive a loan from any of the U.S. Department of Education's loan programs, including the Perkins Loan Program.

Individual in a Medical Internship or Residency Program Ineligible
HEA 464(c)(2)(A)(i)

Incarcerated Students Ineligible
34 CFR 668.32(c)(2)(i)

Willingness to Repay
34 CFR 674.9(e)

Loan Written Off
34 CFR 674.9(g)

OTHER ELIGIBILITY FACTORS

In selecting among eligible applicants, a school must consider evidence of a student's willingness to repay the loan. Failure to meet payment obligations on a previous loan is evidence that the student is unwilling to repay other loans (see Chapter 7 of this Part).

If a borrower had a previous Perkins Loan, National Direct Student Loan (NDSL), or National Defense Student Loan (Defense Loan) that was written off because the school was unable to collect, the borrower may be eligible for a new loan only if he or she reaffirms the debt. Reaffirmation is not required if the amount written off was $25 or less. To reaffirm a debt that was written off, the borrower must acknowledge the loan in a legally binding manner, such as by signing a new promissory note, by signing a new repayment agreement, or by making a payment on the loan.

Previous Cancellation Due to Disability
34 CFR 674.9(h)

If a student has obtained a cancellation of a previous Perkins Loan or NDSL due to permanent and total disability and is applying for a subsequent Perkins Loan or NDSL, the borrower may be eligible to receive additional funds from the Perkins Loan Program if he or she meets certain conditions:

- the borrower's physician certifies that the borrower's condition has improved and that he or she is able to engage in substantial gainful activity and

- the borrower signs a statement acknowledging that any new Perkins Loan or NDSL cannot be canceled in the future on the basis of any present impairment, unless the condition substantially deteriorates to the extent that the definition of total and permanent disability is again met.

If a loan was canceled based on the borrower's permanent and total disability, the borrower cannot subsequently be required to repay that loan, even if the borrower's medical condition improves to the point that he or she is no longer disabled, unless the school can prove that the claim of disability was fraudulent (see Chapter 5 of this Part).

Previous Discharge in Bankruptcy
Bankruptcy Reform Act of 1994

As a result of the Bankruptcy Reform Act of 1994, a student may not be denied student financial assistance from the Department's programs, including the Perkins Loan Program, solely on the basis of a bankruptcy determination. If a student has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been determined by a court of law to be dischargeable in bankruptcy, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of a future Perkins Loan or other student loan programs. A student is no longer required to establish eligibility for a new student loan by agreeing to repay the loan discharged in bankruptcy. However, schools may continue to consider the student's **post**-bankruptcy credit history in determining willingness to repay.

LOAN AVAILABILITY

A school must give priority to those students with exceptional financial need as defined by the school using procedures it establishes for that purpose. The school's selection procedures must be in writing, uniformly applied, and kept on file at the school. Before an undergraduate student can receive a loan, the school must determine his or her eligibility or ineligibility for a Federal Pell Grant; a preliminary hand calculation is acceptable after a student has filed a *Free Application for Federal Student Aid* (FAFSA) with the Central Processing System (CPS). Note that even if the hand calculation shows the undergraduate student will be ineligible for a Pell Grant, the student must apply for one before a Perkins Loan can be awarded. Remember that a school may not disburse a Perkins Loan to a student unless he or she has an "official" Expected Family Contribution (EFC) that has been calculated by the CPS for the same award year in which the disbursement will be made.

Effective October 1, 1998, a school is now required to offer a reasonable proportion of the dollar amount of the loans made from its Perkins Loan revolving fund to independent or less-than-full-time students. Previously, a school was required to offer at least 5 percent of the dollar amount of loans made under the Perkins Loan Program to these students if the school's Federal Capital Contribution (FCC) was partly based on the financial need of these students and the financial need of these students exceeded 5 percent of the total financial need of all students at the school.

Offering Loans to Independent and Less-Than-Full-Time Students
HEA 464(b)

A school may award a Perkins Loan and/or a Federal Work-Study (FWS) job to a student who is enrolled or accepted for enrollment at least half time in an eligible teacher certification or professional credential program. Eligibility criteria for such a program are discussed in Part 1, Chapter 1 of this Reference.

Teacher Certification Programs
34 CFR 668.32(a)(1)(iii)

A school may set certain priorities when packaging aid. For example, a school could first distribute Perkins Loans to full-time third-year students whose financial need is at least $500 after their EFCs, Pell Grants, and any scholarships received have been subtracted from the cost of attendance. Perkins Loan funds may not be used exclusively for such a group, of course, but it is permissible to establish priorities.

Schools May Set Priorities
34 CFR 674.10

In administering the Perkins Loan Program, a school must comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202). The Department considers the Perkins Loan Program to be a credit assistance program authorized by federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, a school may request that a loan applicant disclose marital status, income from alimony, child support, and spouse's income and signature.

Late Disbursements
34 CFR 668.164(g)

ELIGIBILITY OF STUDENT WHO DROPS OUT

A student who drops out **before** receiving his or her Perkins Loan may receive payment, but only under certain circumstances. See "Late Disbursements" in Chapter 2 of this Part for more information.

If a student drops out **after** receiving a loan, but before the end of the payment period, the school determines any refund and repayment as discussed in *SFA Handbook: Institutional Eligibility and Participation*.

Making & Disbursing Loans

PART 2 Chapter 2

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

OVERAWARDS/CASH MANAGEMENT RULES

A financial aid administrator may not award or disburse a Perkins Loan or NDSL to a student if the combination of that loan and all of the student's other resources would exceed the student's need. The aid administrator must take into account those resources that he or she can reasonably anticipate at the time aid is awarded to the student, those the school makes available to its students, or those the aid administrator knows about. A list of resources and a discussion of overawards are in Part 1, Chapter 2 of this Reference.

Uniform cash management rules for the Student Financial Assistance (SFA) Programs cover disbursing funds to a student, crediting a student's account, calculating allowable charges, and holding student loans. They are discussed in *SFA Handbook: Institutional Eligibility and Participation*. The major provisions affecting Perkins Loan disbursement are discussed on pages 6-17 to 6-19.

LOAN MAXIMUMS

Effective October 1, 1998, the Expanded Lending Option is eliminated. Also effective October 1, 1998, the maximum annual and aggregate loan limits have changed. The maximum amount an eligible student may now borrow is $4,000 per award year for a student who has not successfully completed a program of undergraduate education or $6,000 per award year for a graduate or professional student.

The aggregate loan limits now include only unpaid principal. (Previously, a student who had borrowed the maximum cumulative amount for a graduate or professional student would not be eligible for another loan even if the student had repaid part or all of the amount he or she had borrowed.) The maximum aggregate amount an eligible student may now borrow is $20,000 for an undergraduate student who has completed two academic years and is pursuing a bachelor's degree or $40,000 for a graduate or professional student, including loans borrowed as an undergraduate student.

Maximum Loan Eligibility Calculation

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

Disbursement of SFA Funds

34 CFR 668.164

Loan Limits

HEA Section 464(a)

A student engaged in a program of study abroad may receive a Perkins Loan provided that he or she meets all eligibility requirements. A student studying abroad in a program approved for credit by the home school where the student is enrolled may exceed the annual and/or cumulative loan limits by 20% if reasonable costs of the program exceed the cost of attending the home school.

A student enrolled in a teacher certification program may be considered either an undergraduate or a graduate student. This determination is left to the student's school. The borrowing limit for a student enrolled in a teacher certification program depends on the school's determination of his or her status (undergraduate or graduate). A teacher-certification student who is considered to be a graduate student and who has already borrowed the maximum aggregate allowed for an undergraduate is eligible to receive an additional Perkins Loan or NDSL. A teacher-certification student who is considered to be an undergraduate student and who has already borrowed the maximum aggregate allowed for an undergraduate is not eligible to receive an additional Perkins Loan or NDSL.

COUNSELING STUDENTS

Before making the first Perkins Loan or NDSL disbursement, the school must have the student sign the promissory note. (See Chapter 2 of this Part.) The school must also furnish the student with certain information. It must inform the student about his or her rights and responsibilities under the Perkins Loan Program, and it must inform him or her that the loan may be used only for educational expenses and that he or she must repay the loan. The school should also make sure the student knows that the **school** holds the promissory note.

A school must also provide the student with the following information in writing **before making the first loan disbursement:**

1 the name of the school and the addresses where payments and communications should be sent
2 a statement indicating that the school will report the outstanding balance of the loan to a national credit bureau at least annually
3 the principal amount of the loan
4 the stated interest rate
5 the maximum yearly and aggregate amounts the student may borrow
6 an explanation of when the student must start repayment and when he or she must begin paying the interest that accrues
7 the maximum and minimum repayment terms the school may impose and the minimum monthly payment required
8 a statement of the total cumulative balance owed by the student to that school and an estimate of the monthly payment amount needed to repay that balance
9 options the borrower may have to consolidate or refinance

10 the borrower's right to prepay all or part of the loan at any time without penalty
11 a summary of circumstances in which repayment of the loan principal or interest may be deferred or canceled, including a brief notice about the Department of Defense program for repaying loans based on certain military service
12 a definition of default and the consequences for the borrower, including a statement that the school may report the default to a national credit bureau;
13 the effect that accepting the loan will have on the borrower's eligibility for other types of student aid
14 a complete list of charges connected with making the loan, including whether those charges are deducted from the loan or whether the student must pay them separately
15 an explanation of the costs that may be assessed the student in collecting the loan, such as late charges and collection and litigation costs.

The school must provide this information to the student—in writing—as part of the application material, as part of the promissory note, or on a separate form. Although the information can be mailed to a student, it is preferable for the aid administrator to meet with the student to answer any questions and to emphasize his or her responsibility to repay the loan.

The school is encouraged to use this initial counseling session to obtain the following information from a student:

- the student's name, current address, and Social Security Number;
- the student's parents' permanent address;
- the student's and his or her parents' telephone numbers;
- the student's expected date of graduation;
- the student's spouse's name and address;
- the student's spouse's employer;
- the names and addresses of two or three of the student's personal acquaintances; and
- the student's driver's license number, if any.

This information could be valuable later for use in collection procedures, and it will help the school locate a student who leaves school without notice or who does not attend the exit interview. Effective pre-loan counseling sessions will satisfy the school's requirement to tell each borrower about his or her rights and obligations and to provide information about the requirement to repay the loan. However, this counseling may not be used to satisfy the requirement for an exit interview. (See Chapter 6 of this Part.)

Promissory Notes
Dear Colleague Letters CB-93-9 and CB-96-8

THE PROMISSORY NOTE

The promissory note is the legally binding document that is evidence of a borrower's indebtedness to a school. A student must sign this note before he or she can receive any Perkins Loan funds and must receive a copy of the note at (or before) the exit interview. The note includes information about the loan's interest rate, repayment terms, and minimum rates of repayment; deferment, forbearance, and cancellation provisions; collection costs; attorney fees; and late charges.

The Department has issued two sets of different promissory notes, either of which a school may use. Dear Colleague Letter CB-93-9, dated July 1993, included information and sample promissory notes. The Department issued redesigns of the July 1993 promissory notes in Dear Colleague Letter CB-96-8, dated May 1996. Both sets of notes (July 1993 and May 1996) include all changes required by the Higher Education Amendments of 1992. A school must use a promissory note that the Department has approved; the school may make only nonsubstantive changes to the note (such as changes to the type style or the addition of items such as the borrower's driver's license number).

A promissory note must state that the school is required to disclose to a national credit bureau with which the Department or the school has an agreement the amount of the loan made to the borrower along with other relevant information. The note must also state that if the borrower defaults on the loan, the school or the Department, if the loan is assigned to the Department for collection, is required to disclose the default and any other relevant information to the same national credit bureau to which the loan was originally reported.

The Higher Education Amendments of 1992 eliminated the "defense of infancy," whereby the signing of a contract by a minor would not create a binding obligation. Under this provision of the law, a minor may sign a promissory note without an endorser or any security, and the minor who signs is responsible for repayment regardless of any state law to the contrary.

If the school does not have a valid note or other written evidence that would be upheld in a court of law, the school has no recourse against a borrower who defaults. In such cases, the school would have to repay to its Perkins Loan fund any amounts loaned, whether recovered from the borrower or not, as well as any Administrative Cost Allowance (ACA) claimed on those amounts. Two examples of invalid notes are notes that have been changed after they were signed and notes without proper signatures or dates for loan advances.

Comparison of July 1993 Notes with May 1996 Notes

The Department redesigned the July 1993 promissory notes to facilitate implementing the signature requirement change, which allows a school to obtain a borrower's signature on the note only once each award year, rather than each time a disbursement is made. The May 1996 promissory note is a single-page (front and back) document. Separate promissory notes based on the borrower's enrollment status

(half time or greater or less than half time) have been eliminated, as were separate sections for obtaining information on prior Perkins Loans and for obtaining a borrower's signature for each loan advance.

There are no new provisions in the May 1996 notes. A school still has the option of using a closed-end or open-ended note. The sample promissory notes issued in July 1993 are open-ended notes. Those issued in May 1996 are provided in both formats. As stated previously, a school is not required to use the May 1996 notes. If a school chooses to use the July 1993 promissory notes, it will be required to obtain the borrower's signature for each advance (disbursement) of the loan. **A school may not alter the July 1993 promissory notes to reflect the changed signature requirement.** A borrower for whom the school uses a July 1993 note is required to sign at the end of the last page of the note.

Changes in Loan Amount—May 1996 Notes

If a student's initial loan amount **decreases**; the borrower has signed either an open-ended or a closed-end May 1996 promissory note; and a disbursement has been made, the school can choose one of the following options:

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

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

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

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

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

School-Designed Note

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

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

Minimum Monthly Payment Option

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

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

If the optional provisions are included in the school's note, a minimum monthly payment of $40 is required for a loan made on or after October 1, 1992 to a borrower who had no outstanding balance on a Perkins Loan, NDSL, or Defense Loan on the date the loan was made. (For other borrowers, the monthly minimum amount remains $30.)

Closed-End and Open-Ended Promissory Notes

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

- **"Closed-end" or "Limited" Note.** This note is valid for not more than 12 months and usually covers one award year or one academic year. It may also be used for a single academic term. The loan amount must be entered in the note. Closed-end notes can be designed for a single disbursement (if the award is less than $501) or multiple disbursements. If a school uses multiple disbursements and uses the July 1993 promissory notes, the borrower must sign for each advance. If there will be only one disbursement, the borrower's signature at the end of the note is sufficient.

- **"Open-ended" Note.** If a school uses an open-ended note, it does not have to issue new notes for future loans it makes to the same borrower **unless** the requirements of the Perkins Loan

Program are changed by statute or regulation. An open-ended note may be used for several years.

The sample notes in Dear Colleague Letter CB-93-9 are open-ended notes. This open-ended note does not itself contain the specific amount of the approved loan. Instead, at the time of each disbursement, the school must enter the amount advanced and the date of receipt in the "Schedule of Advances," which is a part of the note. The borrower must sign this schedule **each time** he or she receives a disbursement. **It is not acceptable for the student to sign in advance.**

Dear Colleague Letter CB-96-8 also provides an open-ended note. Unlike the July 1993 open-ended note, this open-ended note contains the specified amount of the approved loan for each award year.

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

Requirements For Loans That Have Been Paid In Full
34 CFR 674.19(e)(4)

Notification Of Student's Right To Cancel Loan
34 CFR 668.165(a)

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

GENERAL DISBURSEMENT REQUIREMENTS

The cash management requirements that apply specifically to the campus-based programs are discussed in Part 1, Chapter 3.

The following disbursement provisions are specifically applicable to Federal Perkins Loans:

- If a school credits a student's account at the school with Perkins Loan funds, the school must notify the student of the date and amount of the disbursement, the student's right to cancel all or a portion of that loan and his or her right to have the funds returned to the school's Perkins fund.

- The school must send the above notice, either in writing or electronically, within 30 days of the date the school credits the student's account at the school. If the school sends the notice electronically, the school must require the student to confirm receipt of the notice, and must keep a copy of the confirmation.

- The school must return the Perkins Loan proceeds, cancel the loan, or do both if

  Δ it receives a loan cancellation request within 14 days after the school sends the notice to the student, or
  Δ the school sends the notice more than 14 days before the first day of the payment period, and the school receives a loan cancellation request by the first day of the payment period.

Power of Attorney
34 CFR 674.16(i)

- If the school does not receive the cancellation request within the time period described above, the school may return the loan proceeds, cancel the loan, or do both, but is not required to do so. The school must notify the student in writing or electronically of the school's decision.

A school may not disburse funds for a payment period until the student enrolls for that period.

The school must report the disbursement and amount of each Perkins Loan or NDSL to a national credit bureau with which the Department or the school has an agreement. See Chapter 8 of this Part for further details on complying with this requirement.

Keep in mind that if a school makes payments before the student begins attendance, it must accept responsibility for any overpayment. If a student withdraws—or is expelled—before the first day of classes, for example, all funds disbursed are considered an overpayment and must be restored to the Perkins Loan fund. A student who never begins class is considered to have withdrawn.

A school official may not obtain a student's power of attorney to endorse any check used to disburse funds or to sign for any loan advance unless the Department has granted prior approval. The Department would not grant such a power of attorney unless the school could demonstrate that there is no one else (such as a relative, landlord, or member of the clergy) who could act on behalf of the student. There are no exceptions to gaining prior approval to obtain a student's power of attorney. For a student studying abroad, the school does not automatically obtain the student's power of attorney; the school will still be required to request the Department's approval and to demonstrate that there is no one else who can act on behalf of the student.

Frequency of Disbursements

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

In general, to determine the amount of each disbursement, a school will divide the total loan amount by the number of payment periods the student will attend. The definition of payment period is in 34 CFR 668.4. For a school that measures progress in credit hours and has academic terms, a payment period is defined as a term (a semester, trimester, quarter, or nonstandard term). The definition of payment period for a school that does not have academic terms or a school that measures progress in clock hours is discussed in detail in *SFA Handbook: Institutional Eligibility and Participation*.

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

Uneven Costs/Unequal Disbursement Example

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

For a student attending less than a full academic year, the amount advanced is determined by dividing the loan amount by the number of payment periods the student will attend in the academic year. Only one payment is necessary if the total Perkins Loan amount awarded to a student for an academic year is less than $501.

Uneven Costs/Unequal Disbursements

If a student incurs uneven costs or resources during an academic year and needs additional funds during a payment period, the school may advance the additional amount **regardless of whether the school uses standard academic terms.**

Within a payment period, the school may advance funds in whatever installments it determines will best meet the student's needs.

LATE DISBURSEMENTS

A school may make a late disbursement of a Perkins Loan to an ineligible student if the student became ineligible solely because the student is no longer enrolled at the school for the award year. Before the student dropped out, the school must have received a *Student Aid Report* (SAR) or *Institutional Student Information Record* (ISIR) for the student with an official EFC and have awarded the student the Perkins Loan. The school may make that late disbursement only if the funds are used to pay for educational costs that the school determines the student incurred for the period in which he or she was enrolled and eligible. The school must make the late disbursement no later than 90 days after the date the student became ineligible.

Uneven Costs/Unequal Disbursements Example

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

Late Disbursements

34 CFR 668.164(g)

Repayment

GRACE PERIODS

A "grace period" is the period of time before the borrower must begin or resume repaying a loan. An "initial grace period" is one that immediately follows a period of enrollment and immediately precedes the date repayment is required to begin for the first time.

Grace Period Definitions
34 CFR 674.2

Grace Period Example
Gordon takes out a Perkins Loan in the fall quarter at Sims School of Botany, drops out of school for the winter quarter, and resumes at least half-time study for the spring quarter. Gordon is entitled to a full initial grace period once he again leaves school or drops below half-time status.

Initial Grace Periods

For borrowers who have been attending at least half time, initial grace periods are either six or nine consecutive months after the borrower drops below half-time study at an eligible institution or at a comparable school outside the United States. The length of the initial grace period varies because of legislative changes to the Federal Perkins Loan Program. Repayment terms also vary, depending on when a borrower took out a loan. If a borrower has several loans, each is subject to the repayment terms in effect at the time the particular loan was made.

If a borrower requests a deferment to begin during the initial grace period, the borrower must waive (in writing) his or her rights to the initial grace period. The request for a deferment alone is not sufficient documentation for a school to waive the initial grace period; the borrower must also acknowledge in writing that he or she wants the waiver. (Deferments are discussed in Chapter 4 of this Part.)

Repayment of a Perkins Loan begins **nine months** after the date that the borrower drops below half-time enrollment. Repayment of a National Direct Student Loan (NDSL) made before October 1, 1980, begins **nine months** after the date that the borrower drops below half-time enrollment. Repayment of an NDSL made on or after October 1, 1980 begins **six months** after the date that the borrower drops below at least half-time enrollment.

For a student attending at least half time, the initial grace period does not end until he or she ceases to be enrolled at least half time for a **continuous** period of six or nine months, whichever is applicable. A borrower who returns to school on at least a half-time basis prior to completion of the initial grace period is entitled to a full initial grace

period, calculated as six or nine consecutive months, from the date that he or she drops below half-time enrollment again.

Effective October 1, 1998, any period of at least 30 days during which a borrower who is a member of the Armed Forces reserve is called or ordered to active duty is excluded from his or her initial grace period. Any such period excluded from a borrower's grace period cannot exceed 3 years.

Grace Periods (Borrowers Attending at Least Half Time)

Type of Grace Period	Perkins Loans	NDSLs made on or after 10/1/1980	NDSLs made before 10/1/1980
Initial	9 months	6 months	9 months
Post-Deferment	6 months	6 months	none

Less-Than-Half-Time Student/ Outstanding Loan Grace Period Example

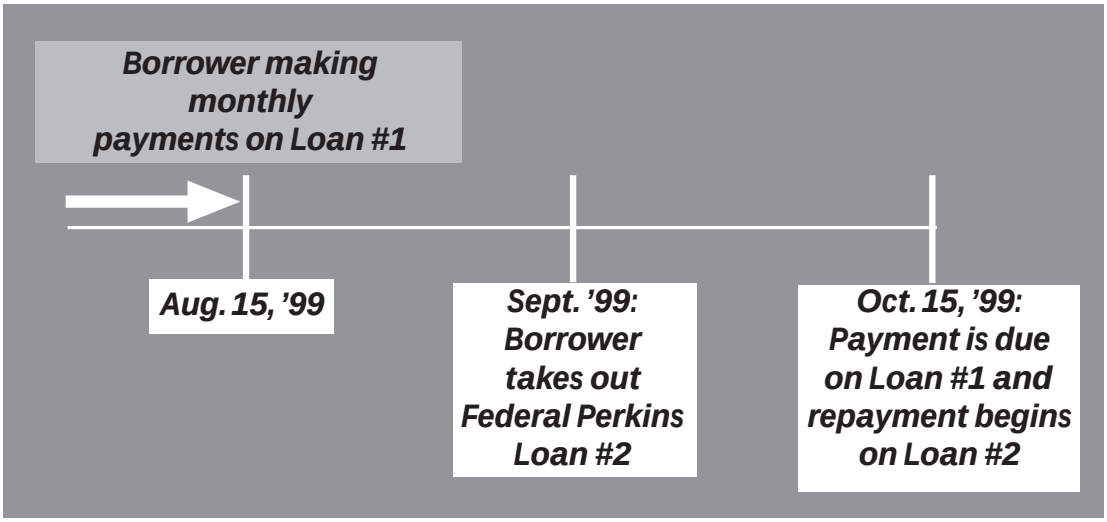
Jason has been making monthly payments on Perkins Loan #1. He takes out Perkins Loan #2 in September 1999. His next payment on Loan #1 is due October 15. Therefore, Jason will begin repaying Loan #2 at the same time. ***Remember that the repayment status of the outstanding loan determines the repayment status of the second loan.*** *See 34 CFR 674.32*

Initial Grace Period for Borrower Attending Less Than Half Time

A borrower who is attending **less than half time** and who has an outstanding Perkins Loan or NDSL must begin repayment on an **additional** loan when the **next scheduled installment** of the outstanding loan is due; there is no formal grace period or in-school deferment on the new loan.

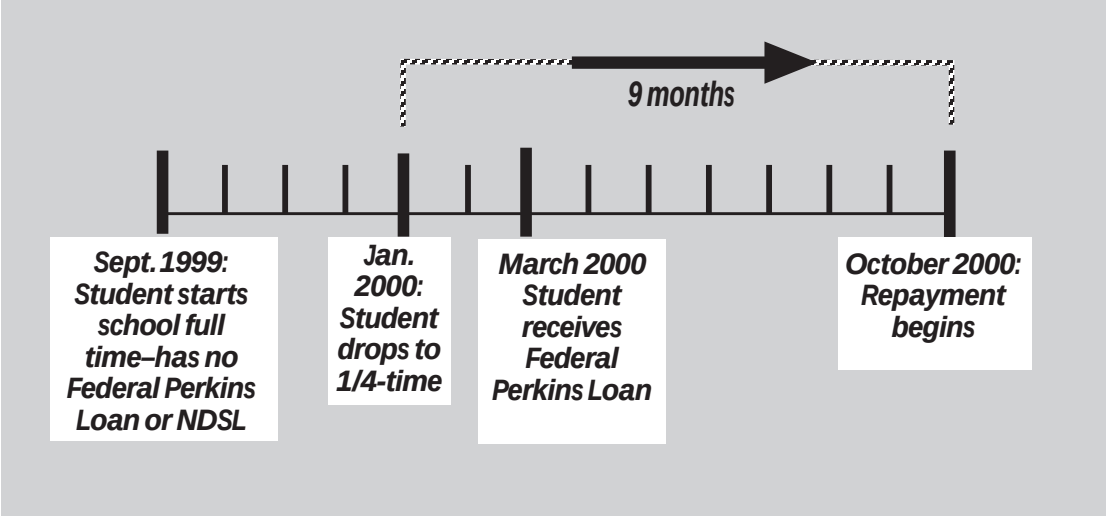
A borrower who is attending less than half time and who has no outstanding Perkins Loan or NDSL must begin repaying a new loan nine months from the date the loan is made **or** nine months from the date the borrower ceases to be enrolled as a regular student on at least a half-time basis,[1] **whichever is earlier**.

Less-Than-Half-Time Attendance/Outstanding Loan Example



1. This nine-month period includes the date the loan was made.

Less-Than-Half-Time Attendance/No Loan Example



Post-Deferment Grace Periods

A "post-deferment grace period" is the period of six consecutive months that immediately follows the end of a period of deferment and precedes the date on which the borrower must resume repayment on the loan. A Perkins Loan or NDSL made on or after July 1, 1993 has a six-month post-deferment grace period after each of the authorized deferments, **including** the economic hardship deferment. Perkins Loans and all NDSLs made on or after October 1, 1980 but before July 1, 1993, have six-month post-deferment grace periods after each of the deferments that apply to those loans **except** the hardship deferment. Neither the deferment nor the grace period is counted as part of the 10-year repayment period.

It is important to note that a grace period is always day-specific; that is, an initial grace period begins on the day immediately following the day the borrower drops below half-time enrollment. Likewise, a post-deferment grace period begins on the day immediately following the day on which an authorized period of deferment ends.

If a borrower has received loans with different grace periods (and different deferment provisions), the borrower must repay each loan according to the terms of its promissory note; the borrower must pay the minimum monthly payment amount that applies to each loan that is not in a grace or deferment period.

Less-Than-Half-Time Student/No Loan Grace Period Example

Paula starts school full time in September 1999. She does not have an outstanding Perkins Loan or NDSL. In January 2000, Paula drops to one-quarter time. In March, she receives a Perkins Loan. Nine months after the date the loan was made is December. Nine months after the time Paula dropped below half-time enrollment is October, and this nine-month period includes the date the loan was made. Because October is earlier than December, Paula must begin repayment in October.

Payment Made During Initial Grace Period Example

Shannon receives a $1,000 Perkins Loan, and her grandmother gives her $400 during the academic year in which the loan is made. Shannon receives the $400 before the initial grace period ends. She applies the money to her Perkins Loan. The principal advanced to Shannon becomes $600. This is not considered a prepayment because the original loan amount has been reduced.

PREPAYMENT

The borrower may prepay all or part of the loan at any time without penalty. Amounts repaid **during the academic year the loan was made** and **before the initial grace period has ended** are not considered prepayments, but **must be used to reduce the original loan amount.**

If the borrower repays **more than the amount due** for any repayment period after the initial grace period has ended, the school must use the excess to prepay principal, unless the borrower designates the excess as an advance payment on the next regular installment. If the borrower designates the excess as an advance payment on the next installment and that advance payment exceeds the amount of the next regularly scheduled installment, the school must use the excess to prepay principal.

REPAYMENT PLAN

Before the student ceases to be enrolled at least half time, the school must establish a repayment plan. The following provisions apply to the plan:

- If the last scheduled payment is $25 or less, the school may combine it with the next-to-last payment.

- If the installment for all loans a school made to a borrower is not a multiple of $5, the school may round that payment to the next highest dollar amount that is a multiple of $5.

- Any payment a school receives must be applied in the following order:

  1 collection costs,
  2 late charges (or penalty charges),
  3 accrued interest, and
  4 principal.

If a student receives loans from more than one school, the repayment of each loan is made to (or default is attributed to) the school where the student received the loan.

Effective October 1, 1998, under a new Incentive Repayment Program, a school, with the Department's approval, may

- reduce a loan's interest rate by up to 1 percent if the borrower makes 48 consecutive monthly payments

- discount by up to 5 percent the balance a borrower owes on a loan if he or she pays the loan in full before the end of the repayment period

- establish any other repayment incentive options hat reduce default and replenish student loan funds.

A school may not use federal funds or institutional funds from the Perkins Loan revolving fund to pay for any Incentive Repayment Program.

EXIT INTERVIEW AND REPAYMENT SCHEDULE

At the time a borrower leaves school, the school must conduct an exit interview, during which a repayment schedule is provided to the borrower. (See Chapter 6 of this Part for more information.) The U.S. Department of Education recommends a repayment schedule that shows the principal and interest due on each installment and the amount left to be paid. This type of schedule is not a requirement; however, a repayment schedule should contain at least

- the number of payments of principal or the number of equal payments,
- the rate of interest,
- the date the first payment is due, and
- the frequency of payments.

DEVELOPING A REPAYMENT SCHEDULE

Interest on a loan must be computed at the rate of 5 percent per annum simple interest on the unpaid principal balance. Interest accrues on a Perkins Loan; it is not capitalized. Generally, interest is computed from the date a payment is received rather than from the due date. However, there are exceptions. For example, if a grace period expires in the middle of a month, interest may be computed to the beginning of the next month. Also, if a past-due payment is received before the next regularly scheduled payment, the interest may be computed according to the established payment schedule—no adjustments are necessary. Past-due payments should be applied in the same order as other payments, except that past-due payments must be applied to the "oldest" past-due dollars first.

To calculate the amount due in each payment over a period of 10 years, including principal and interest, a school may use the following table of constant multipliers. The table is based on the assumption that the school will not exercise a minimum monthly payment option. Using this table will ensure that each of the borrower's payments sufficiently covers the interest accruing between payments and that the loan will be repaid within the specified amount of time.

10-Year Repayment Table of Constant Multipliers

Annual Rate	Payment Frequency	Payments per Year	Total Payments	Constant Multiplier
5%	Monthly	12	120	.0106065
5%	Bimonthly	6	60	.0212470
5%	Quarterly	4	40	.0319214

Calculated Monthly Payment Amount Less Than Minimum Monthly Payment Example

Harv has Perkins Loans of $1,500 and $1,000 (for a total debt of $2,500) and has a promissory note that includes the minimum monthly payment provision. Using the constant multiplier table, the total monthly payment on the two loans would be less than $40:

Monthly payment on loan #1	
$1,500 X .0106065 =	*$15.91*
+ Monthly payment on loan #2	
$1,000 X .0106065 =	*$10.61*
= Total payment per month	*$26.52*

Because the monthly payment on the two loans is less than $40, Moore University may decide to exercise the minimum $40 payment option. If the school does so, it calculates the monthly payment for each loan by dividing the original principal of the loan by the total original principal of all loans:

Monthly payment on loan #1	
$1,500 ÷ $2,500 =	*.600000*
	X $40
	$24
Monthly payment on loan #2	
$1,000 ÷ $2,500 =	*.400000*
	X $40
	$16

Monthly payment on loan #1	*$24*
+ Monthly payment on loan #2	***$16***
= Total payment per month	*$40*

MINIMUM MONTHLY REPAYMENT AMOUNTS

A school may require a borrower to pay a minimum monthly payment amount on an NDSL or on a Perkins Loan[2] if

- the promissory note includes a provision specifying a required amount for the minimum payment and the monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly payment or
- the borrower has received loans with different interest rates at the same school and the total monthly payment would otherwise be less than the minimum monthly payment.

If the promissory note includes the optional minimum monthly payment provisions, the school may require the borrower to repay a monthly amount of at least $40—or $30 in the case of certain loans.

A school may require a borrower to pay at least $40 per month (or the equivalent in bimonthly or quarterly payments) if

- the monthly payment amount over a 10-year repayment period is less than $40[3] for a loan made on or after October 1, 1992 to a borrower who, at the time the loan was made, had no outstanding loan balance on a Perkins Loan, NDSL, or National Defense Student Loan (Defense Loan) **and**
- the promissory note includes an optional $40 minimum monthly payment provision.

A school may require a borrower to pay at least **$30** per month (or the equivalent in bimonthly or quarterly payments) if

- the monthly payment amount over a 10-year repayment period is less than **$30;**[3]
- the loan is
  - Δ a Perkins Loan or NDSL made before October 1, 1992 or
  - Δ a Perkins Loan or NDSL made on or after October 1, 1992 to a borrower who, at the time the loan was made, had an outstanding loan balance on a Perkins Loan, NDSL, or Defense Loan; **and**
- the promissory note includes an optional $30 minimum monthly payment provision.

2. The minimum monthly payment amount for a Defense Loan was $15.

3. A student's monthly payment amount may need to be higher than $40 (or $30), of course, so that his or her debt is repaid by the end of 10 years.

The regulations require a school to divide the $40 (or $30) minimum monthly payment among the loans in the same proportion that the original loan principal of each loan bears to the total original principal of all loans. Thus, if the total monthly payment amount for more than one loan would otherwise be **less than the applicable minimum monthly payment amount** and if a school exercises the minimum monthly payment option, the 10-year table of constant multipliers cannot be used.

If the borrower has received loans with different grace periods and deferments, the school must treat each note separately, and the borrower must pay the minimum monthly payment that is applicable to each loan that is not in a grace or deferment period.

A borrower may have received Perkins Loans or NDSLs from more than one school. If only **one** school exercises the $40 (or $30) option when the total monthly payment amount is less than $40 (or $30), that school receives the difference between $40 (or $30) and the repayment owed to the second school.

If a borrower has obtained Perkins Loans or NDSLs from more than one school and **each** school exercises the minimum repayment option, the $40 or $30 minimum repayment is divided among the schools in proportion to the total amount of principal each has advanced.

If the total monthly repayment is **less than $40 (or $30)**, a school may exercise the minimum repayment options applicable to the respective loans. However, the maximum monthly repayment may not exceed $40 (or $30).

If the borrower owes funds to more than one school, he or she should contact any school that is exercising a minimum monthly payment option and should provide the following information:

- the names of all other schools to which the borrower owes funds under the Perkins Loan Program;
- the approximate amount of the indebtedness to each school; and
- any information that would help identify the loans—for example, the loan number and the dates of loan advances.

The school the borrower contacts should then contact the other schools and negotiate the amount each should receive from the borrower.

If a borrower has loans with different interest rates from the same school and if the borrower's total monthly repayment is **at least** $40 (or $30) for all loans, the school may not exercise the minimum monthly payment on any loan. If the total monthly repayment is **less than** $40 (or $30), the school may exercise the $40 (or $30) option, as long as

Two Schools/Minimum Monthly Payment Amount Example

Jennifer has Perkins Loans from Shady Acres College and Sunnydale University. Shady Acres does not exercise the minimum monthly payment option and receives $25 a month (the amount due under its established 10-year repayment plan). Sunnydale exercises the $40 option and receives $15, the difference between $40 and the amount of principal and interest paid to Shady Acres.

the minimum monthly repayment provision was included in the promissory note. If the school exercises this option, the school must divide each monthly payment among all loans proportionate to the amount of principal advanced under each loan.

A school may reduce a borrower's scheduled payments for up to one year at a time if the borrower is paying the $40 (or $30) minimum monthly payment amount and if the school determines that the borrower is unable to make the scheduled payments due to hardship, such as prolonged illness or unemployment.

ESTABLISHING REPAYMENT DATES

Depending on the repayment schedule (monthly, bimonthly, or quarterly), the borrower's first payment is due one, two, or three months from the date the grace period expires. Repayment schedules must be adjusted (preferably on the first installment) so that the loan will be repaid within the normal 10-year period or as prescribed in the terms of the promissory note.

For convenience, a school may establish standard repayment dates for borrowers who are on quarterly repayment schedules. The first repayment date may be the first day of the calendar quarter after the grace period has expired. Four standard repayment dates would be used: January 1, April 1, July 1, and October 1. (See the chart below.)

Another type of repayment schedule is a "rolling" quarterly repayment schedule in which each borrower's first payment is due exactly three months after the date his or her grace period expires. For example, if a borrower's first grace period expires on May 17, the first installment payment is due August 18. Another borrower's grace period expires May 18, so the first installment payment on that loan is due August 19.

For collection and bookkeeping purposes, a fixed repayment date is preferred. Otherwise, if the borrower is entitled to a deferment, the school may have problems computing payments due. (See Chapter 4 of this Part.) Once the payment date is established, the borrower will owe principal and interest for any portion of a scheduled installment period not covered by a deferment. However, if the borrower is in deferment on a due date, any amounts owed are carried over and paid on the first due date on which the borrower is out of deferment.

Perkins Loan Quarterly Billing Example (with four standard repayment dates)

Borrower's Termination Date	Initial 9-Month Grace Period Ends	Installment Due
January 1	September 30	January 1
February 1	October 31	January 1
March 1	November 30	January 1
April 1	December 31	April 1
May 1	January 31	April 1
June 1	February 28	April 1
July 1	March 31	July 1
August 1	April 30	July 1
September 1	May 31	July 1
October 1	June 30	October 1
November 1	July 31	October 1
December 1	August 31	October 1

INTEREST RATES

The interest rate charged on the unpaid balance of a Defense Loan, NDSL, or Perkins Loan depends on when the loan was made. The interest rate is stated in the borrower's promissory note. The annual interest rate for loans made

- before July 1, 1981 was 3 percent;
- between July 1, 1981 and September 30, 1981 was 4 percent;
- on or after October 1, 1981 is 5 percent.

Interest on loans made on or after October 1, 1981 is computed at the rate of 5 percent per annum simple interest on the unpaid principal balance. Interest should be computed from the date when the payment is received rather than from the due date; however, interest charges may be computed to the nearest first-of-the-month, or they may be computed in accordance with the borrower's established schedule of payments of principal and interest if the borrower is making payments on a regular basis according to that schedule.

LENGTH OF REPAYMENT PERIOD

The term "repayment period" generally refers to the span of time the borrower is given to repay his or her loan—usually a maximum of 10 years from the time repayment begins. (For the exception, see the discussions of hardship and low-income individual that follow.) A borrower must repay his or her loan, plus interest, in quarterly, bimonthly, or monthly installments over a 10-year period. The length of a repayment period may be less than 10 years because of minimum

monthly payment requirements. Remember that a repayment period **never** includes authorized periods of deferment, forbearance, or cancellation.

If a borrower wants to repay the loan in graduated installments, he or she must request permission to do so from the school; if the school agrees to this type of repayment, a graduated repayment schedule is prepared and submitted to the Department for approval. If the Department approves the school's request, the borrower may use the graduated method of repayment.

A school may **extend** a repayment period if the borrower is experiencing a period of prolonged illness or unemployment or if the borrower is a "low-income individual" (defined below). Interest continues to accrue during an extension of a repayment period for any of these reasons.

For NDSLs made on or after October 1, 1980 and for all Perkins Loans, a school may extend the borrower's repayment period up to 10 additional years if, during the repayment period, the school determines that the borrower qualifies as a low-income individual. The school must review the borrower's status annually to determine whether he or she still qualifies. Once a borrower no longer qualifies, his or her repayment schedule must be amended so that the number of months in it does not exceed the number of months remaining on the original repayment schedule (not counting the extension period).

There are two other ways that a school may adjust the repayment schedule for a borrower who qualifies as a low-income individual:

1 The school may require the borrower to pay a reduced amount for a limited time and then later increase the payment amount so that the borrower catches up on payments. For example, a school reduces the payment amount to $10 per month for six months and then increases it to $50 per month until the borrower catches up. The repayment period does not have to be extended.

2 The school may allow the borrower to pay $10 per month for a year and then resume normal payments. This type of adjustment extends the repayment period.

The definition of low-income individual is based on the maximum income levels in the Income Protection Allowance (IPA) chart published annually in the *Federal Register*. The IPA chart for the 1999-2000 award year was published March 28, 1999. See the maximum income levels for the 1999-2000 award year in the chart that follows.

Low-Income Individual Maximum 1998 Income Levels for 1999-2000 Award Year

(derived from Income Protection Allowances published in the June 1, 1998 *Federal Register*)

Number of Family Members (including student)	*1*	*2*	*3*	*4*	*5*	*6*
Maximum 1998 Income Level	*$8,483*	*$15,325*	*$19,075*	*$23,563*	*$27,800*	*$32,513*

NOTE: For families of more than 6, add $3,675 for each additional family member.

Definition of "Low-Income Individual"
34 CFR 674.33(c)(2)

1 For an unmarried borrower without dependents, a low-income individual is one whose total income for the **preceding calendar year** did not exceed 45 percent of the IPA for the **current award year** for a family of four with one in college. For the 1999-2000 award year, an unmarried borrower without dependents is a low-income individual if his or her 1998 income was $8,240 or less.

2 For a borrower with a spouse or legal dependents, a "low-income individual" is one whose total family income for the **preceding calendar year** did not exceed 125 percent of the IPA for the **current award year** for a family equal in size to that of the borrower's family with one family member in college.

DISPOSITION OF PROMISSORY NOTE AND REPAYMENT SCHEDULE

The school must keep the original signed promissory note and repayment schedule in a locked, fireproof container until the loan is repaid in full or until the original note and schedule are needed in order to enforce loan collection. Only authorized personnel may have access to these records.

Promissory notes for loans made prior to December 1, 1987 include a requirement to attach the repayment schedule to the promissory note. If a promissory note has this requirement in the "Repayment" section of the note, the lending school must be careful to attach the repayment schedule to that note. Promissory notes for loans made after December 1, 1987 do not include such a requirement.

If the original promissory note is released for the purpose of enforcing repayment, the school must keep a certified true copy. To qualify as a certified true copy, a photocopy (front and back) of the original promissory note must bear the following certification statement signed by the appropriate school official:

Certification Statement Example

"CERTIFIED TRUE COPY: I declare under penalty of perjury that the foregoing is a true and correct copy of the original Promissory Note.

Signature: _____

Title: _____

Date: _____***"***

At the exit interview, the school must provide a copy of the signed promissory note and the signed repayment schedule to the borrower. If the school is unable to obtain a **signed** repayment schedule, the school must provide the borrower with the schedule he or she will follow in repaying the loan.

If an error is discovered in a promissory note, the school should obtain legal advice about what action it should take. The appropriate school official and the student should sign by or initial all approved changes in the note.

When a loan has been repaid, the school should mark the note with the phrase "PAID IN FULL" and with the date the loan was paid in full, have the note certified by a school official, and give or mail the original note to the borrower. The school must keep a copy of the note for at least three years after the date the loan is paid in full.

Because a borrower must reaffirm a Perkins Loan that has been written off before he or she is eligible to apply for future federal student aid, the Department recommends that the school maintain a certified copy of the signed promissory note as well as a record of the full amount owed in its records beyond the three-year record retention requirement.

Forbearance & Deferment

PART 2 Chapter 4

FORBEARANCE

Forbearance
34 CFR 674.33(d)

If a borrower is willing but financially unable to make the required payments on a loan, he or she may request that the school grant forbearance. Forbearance is a temporary postponement of payments, an extension of time allowed for making payments, or the acceptance of smaller payments than were previously scheduled. Interest will continue to accrue during any period of forbearance. The borrower must request forbearance in writing, providing documentation that supports the borrower's claim that he or she is financially unable to make payments. Forbearance is available for all Perkins Loans and National Direct Student Loans (NDSLs), regardless of when they were made.

When the school receives the borrower's written request and supporting documentation, the school must grant the borrower forbearance for a period of up to one year at a time. The forbearance may be renewed, but the periods of forbearance collectively may not exceed a total of three years. A school may apply an authorized period of forbearance to begin retroactively (that is, to begin on an earlier date than the date of the borrower's request) if the borrower requests that the school do so and if he or she provides adequate documentation to support the request.

Both loan principal and any interest that accrues must be included in the forbearance unless the borrower chooses to pay interest that accrues. The borrower and the school must agree in writing on the terms of forbearance. The forbearance must be in the form of a temporary cessation of payments unless the borrower chooses one of the alternative types of forbearance (as explained in the first paragraph above).

A school must grant forbearance if the total amount the borrower is obligated to pay monthly on all Student Financial Assistance (SFA) loans is equal to or greater than 20 percent of the borrower's total monthly gross income (defined below). If the borrower's loan payments are due less frequently than monthly, a proportional share of the payments is used to determine the equivalent in total monthly payments. For example, if a payment is due quarterly, divide the

amount by three (because the payment covers three months) to determine the equivalent monthly payment amount. The school must require the borrower to submit at least the following documentation:

- evidence of the amount of the most recent total monthly gross income the borrower received and

- evidence of the amount of the monthly payments the borrower owes for the most recent month on his or her SFA loans.

Total monthly gross income is the gross amount of income received by the borrower from employment (either full time or part time) and from other sources.

A school also must grant forbearance if it determines the borrower should qualify due to poor health or other acceptable reasons or if the U.S. Department of Education authorizes a period of forbearance due to a national military mobilization or other national emergency. The Department strongly encourages a school to grant forbearance to a borrower who is serving in Americorps.

DEFERMENT

A borrower is entitled to have the repayment of a loan deferred under certain circumstances. A deferment is a period of time during which the borrower is not required to repay the loan principal. Interest will not accrue during any type of deferment except a hardship deferment. For loans made on or after July 1, 1993, **interest does not accrue** during any type of deferment.

Effective October 7, 1998, regardless of the terms of the borrower's promissory note, all borrowers may receive the Federal Perkins Loan deferments listed in Section 464(c)(2)(A) of the law. This change extends to all loans made under this program deferment provisions previously available only on Perkins Loans and NDSLs made on or after July 1, 1993.

If a borrower is teaching or engaged in other services that qualify him or her for both deferment and cancellation, the loan deferment is considered to run concurrently with any period for which loan cancellation is granted.

A borrower must apply for a deferment in writing by using a deferment form obtained 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 form must be submitted to the school along with whatever documentation the school requires. The school establishes a deadline for submitting the form and documentation. (The Department does **not** approve or supply deferment forms.) The borrower must file a form at least once a year for as long as the deferment can be claimed. The borrower must immediately report any change in deferment status to the lending institution.

DEFERMENT PROVISIONS COMMON TO ALL LOANS

In-School Deferment

A borrower may defer repayment of a Perkins Loan, NDSL, or Defense Loan if he or she is enrolled at least half time in an eligible institution. Interest will not accrue during the deferment. To receive a deferment based on at least half-time enrollment, also called an in-school deferment, the student must be enrolled as a regular student in an eligible institution of higher education or a comparable institution outside the United States approved by the Department for deferment purposes. However, it is not a requirement that the school participate in the Federal Perkins Loan Program. If a borrower is attending a school that ceases to qualify as an institution of higher education, the borrower's deferment ends on the date the school ceases to qualify.

A regular student is one who is enrolled for the purpose of obtaining a degree or certificate. If the borrower is attending at least half time as a regular student for a full academic year and intends to do so in the next academic year, he or she is entitled to a deferment for 12 months.

An in-school deferment may not be granted to a borrower who is serving in a medical internship or residency program, except for a program in dentistry.

Deferment Provisions Now Common to All Loans as a Result of Reauthorization

The following deferments were previously available only on Perkins Loans and NDSLs made on or after July 1, 1993. Effective October 7, 1998, these deferments are available on all loans made under this program. Interest does not accrue during these deferments. Under this program, a borrower may defer repayment while he or she

- is enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Department;[1]
- is engaged in graduate or postgraduate fellowship-supported study (such as a Fulbright grant) outside the United States;
- is enrolled in a course of study that is part of a Department-approved rehabilitation training program for disabled individuals;
- is seeking and is unable to find full-time employment;[2]
- is suffering an economic hardship[2] (discussed below); or
- is engaged in certain types of service that qualify the borrower for cancellation of the loan.[3]

1. The borrower must provide certification that he or she has been accepted for or is engaged in full-time study in the school's graduate fellowship program.

2. These deferments may not be granted in excess of three years.

3. See Chapter 5 of this Part.

Economic hardship deferment
34 CFR 674.34(e)

For a Perkins Loan or an NDSL made on or after October 1, 1980, the borrower is entitled to a 6-month grace period after each type of deferment (a "post-deferment" grace period). Neither the deferment nor the grace period is counted as part of the borrower's 10-year repayment period.

Deferment for Service That Will Qualify for Loan Cancellation

Deferment of repayment is applicable during periods while the borrower is performing a service that will subsequently qualify him or her for cancellation of all or a portion of the loan. A school may grant a deferment of repayment for up to 12 months at a time. Interest does not accrue during this period of deferment. A borrower is entitled to deferment and post-deferment grace periods; therefore, regardless of the length of time that the eligible service is performed, repayment is deferred during that period of service and does not resume until six months after the cessation of service. Effective October 7, 1998, a borrower of any type of loan under this program is entitled to this type of deferment. Previously, only Perkins Loans and NDSLs made on or after July 1, 1993, qualified for this type of deferment.

Because a borrower is entitled to a deferment while performing a service that will subsequently qualify him or her for cancellation of all or a portion of the loan, a school that is exercising the minimum monthly payment provision listed in the promissory note must cease doing so and grant a deferment to cover any period of qualifying service. The amount to be deferred and subsequently canceled must be calculated using the 10-year repayment period.

Prior to October 7, 1998, a borrower of a Perkins Loan, NDSL, or Defense Loan made before July 1, 1993 could **not** receive a deferment during a period while he or she was performing a service that would subsequently qualify him or her for cancellation of all or a portion of the loan; rather, he or she could qualify for loan **postponement.** For information on postponement, see Chapter 6 of the *Federal Student Aid Handbook, 1998-99.*

Economic Hardship Deferments

There are two types of hardship deferments—the hardship deferment, available only on loans made before July 1, 1993, and the **economic** hardship deferment, previously available only on loans made on or after July 1, 1993 but now available on all loans made under this program. For a loan made on or after July 1, 1993, a borrower may receive **only** the **economic** hardship deferment. For a loan made before July 1, 1993, a borrower may now receive either type of hardship deferment. A school may grant an **economic** hardship deferment for up to a total of three years. With the original hardship deferment, a borrower may qualify for **unlimited** deferments due to hardship. However, under the original hardship deferment, a borrower can defer only principal. Under the economic hardship deferment, a borrower may defer interest as well as principal. For more information on the original hardship deferment, see page 2-43.

An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time, not to exceed three years cumulatively if the borrower provides the school with satisfactory documentation showing that he or she

1 has been granted an economic hardship deferment under either the William D. Ford Federal Direct Student Loan (Direct Loan) Program or the Federal Family Education Loan (FFEL) Program for the same period of time for which the Perkins Loan or NDSL deferment has been requested;

2 is receiving federal or state public assistance, such as Temporary Assistance to Needy Families (TANF)—which was formerly called Aid to Families with Dependent Children (AFDC)—Supplemental Security Income, Food Stamps, or state general public assistance;

3 is working full time and is earning a total monthly gross income that does not exceed the greater of

   a the monthly earnings of an individual earning the federal minimum wage or
   b an amount equal to 100 percent of the poverty line for a family of two as determined in accordance with section 673(2) of the Community Service Block Grant Act;

4 is not receiving total monthly gross income that is more than twice the amount in (a) or (b) above and that income minus an amount equal to the borrower's monthly payments on federal postsecondary education loans does not exceed the amount specified in (a) or (b) above; or

5 is working full time and has a federal educational debt burden that equals or exceeds 20 percent of the borrower's total monthly gross income and the borrower's total monthly gross income minus such burden is less than 220 percent of the greater of

   a the monthly earnings of an individual earning the federal minimum wage or
   b an amount equal to 100 percent of the poverty line for a family of two as determined in accordance with section 673(2) of the Community Service Block Grant Act.

For information on the minimum wage, contact the Wage and Hour Division of the U.S. Department of Labor. The telephone number is 202/219-7043.

The U.S. Department of Health and Human Services 1999 poverty line for a family of two is $13,840 for Alaska, $12,730 for Hawaii, and $11,060 for all other states. For more information on poverty lines, see http://aspe.os.dhhs.gov/poverty/poverty.htm, or call 800/433-7327.

To support a borrower's eligibility for an initial economic hardship deferment based on the criteria in option 4 above, the school must collect at least the following documentation:

- evidence showing the amount of the borrower's most recent total monthly gross income from all sources—that is, the gross amount of income the borrower received from employment (either full-time or part-time) and from other sources and

- evidence showing the most recent monthly amount due on each of the borrower's federal postsecondary education loans, as determined by the method described below.

To determine the monthly amount due on federal postsecondary education loans, the school must count only the monthly amount that the borrower **would have owed** on each loan **if it had been scheduled to be repaid in 10 years** from the date the loan entered repayment; the school should disregard the actual repayment schedule or the actual monthly payment amount (if any) that the borrower would owe during the period for which the economic hardship deferment is requested.

To qualify for a **subsequent** period of deferment that begins less than one year after the end of the deferment described in option 3 or 4 above, the school must require the borrower to submit a copy of his or her federal income tax return if the borrower filed a tax return within the eight months preceding the date the deferment is requested.

For purposes of qualifying under option 3 or 5 of the economic hardship deferment, a borrower is considered to be working full time if he or she is expected to be employed for at least three consecutive months for at least 30 hours per week.

To qualify for a deferment for study in a rehabilitation training program, all of the following criteria must be met:

1 The borrower must provide the school with a certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive training services designed to rehabilitate disabled individuals.

2 The borrower must provide the school with a certification from the rehabilitation agency that one of the following entities licenses, approves, certifies, or otherwise recognizes the rehabilitation program as providing rehabilitation training to disabled individuals:

   Δ a state agency with responsibility for vocational rehabilitation programs;
   Δ a state agency with responsibility for drug abuse treatment programs;
   Δ a state agency with responsibility for mental health services programs;

Δ a state agency with responsibility for alcohol abuse treatment programs; or
Δ the U.S. Department of Veterans Affairs.

3 The rehabilitation agency must certify that the rehabilitation program provides or will provide the borrower with rehabilitation services under a written plan that

Δ is individualized to meet the borrower's needs;
Δ specifies the date on which the services to the borrower are expected to end; and
Δ is structured in a way that requires the borrower's substantial commitment to his or her rehabilitation. The Department considers a substantial commitment to be one of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

DEFERMENT EXCLUSIVE TO PERKINS LOANS MADE BEFORE JULY 1, 1993

A borrower of a Perkins Loan made before July 1, 1993 may defer repayment for up to three years and interest will not accrue while he or she is

- a member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard;
- a member of the National Guard or the Reserves serving a period of full-time active duty in the armed forces;
- an officer in the Commissioned Corps of the U.S. Public Health Service;
- on full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;
- a Peace Corps volunteer;
- a volunteer under Title I, Part A of the Domestic Volunteer Service Act of 1973 (ACTION programs);
- a full-time volunteer in service for a tax-exempt organization that the Department has determined is comparable to Peace Corps or ACTION service;[4] or
- temporarily totally disabled or unable to work because he or she must care for a **spouse or other dependent** who is so disabled.[4]

4. See the criteria on the next page.

Peace Corps/ACTION Deferment

A borrower is considered to be providing service comparable to Peace Corps or ACTION service if he or she meets all of the following five criteria:

1 The borrower serves in an organization that is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

2 The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

3 The borrower does not receive compensation that exceeds the rate prescribed under Section 6 of the Fair Labor Standards Act of 1938 (the federal minimum wage), except that the tax-exempt organization may provide the volunteer with health, retirement, and other fringe benefits that are substantially equivalent to the benefits offered to other employees of the organization.

4 The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fund raising to support religious activities.

5 The borrower has agreed to serve on a full-time basis for a term of at least one year.

Temporary Total Disability Deferment

Temporarily totally disabled, with regard to the borrower, means the inability due to an injury or illness to attend an eligible school or to be gainfully employed during a reasonable period of recovery.

Temporarily totally disabled, with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months due to illness or injury.

An affidavit from a qualified physician[5] is required to prove disability. The definition of dependent for temporary total disability deferment purposes is the same as the definition used in the *Free Application for Federal Student Aid* (FAFSA) for a member of the independent applicant's household: A borrower's dependent is a child who receives more than half of his or her financial support from the borrower or another person who lives with the borrower and who receives more than half of his or her financial support from the borrower.

5. A qualified physician is a doctor of medicine or osteopathy who is legally authorized to practice medicine.

Internship/Residency Deferment

A borrower whose Perkins Loan was made before July 1, 1993 and who is serving in a medical internship or residency program is not considered to be in school for deferment purposes and may not receive an in-school deferment on that Perkins Loan for the internship or residency program; however, the borrower is eligible for an **internship deferment** for up to two years.

While the borrower is serving an eligible internship, he or she may defer repayment for up to two years. Interest will not accrue during the internship deferment. An eligible internship is one that requires the borrower to hold at least a bachelor's degree before beginning the program; in addition, the internship must meet the criteria of **either** a **or** b below to be eligible:

a The successful completion of the internship must be required by a state licensing agency as a prerequisite for certification of the individual for professional practice or service. For this type of eligible internship, the borrower must provide the school with the following certifications:

- Δ a statement from an official of the appropriate state licensing agency indicating that the successful completion of the internship is required by the state licensing agency as a prerequisite for certification for professional practice or service;
- Δ a statement from the organization where the borrower will be an intern certifying that attaining a bachelor's degree is required to be admitted in the program;
- Δ a statement from the organization where the borrower will be an intern indicating that the borrower has been accepted into its internship program; and
- Δ certification of the dates when the borrower is expected to begin and complete the program.

b The internship or residency program must lead to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility offering postgraduate training. For this type of eligible internship, the borrower must provide the school with a statement from an authorized official of the internship program certifying that

- Δ a individual must have a bachelor's degree to be admitted in the program;
- Δ the borrower has been accepted into the program; and
- Δ the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

Hardship Deferment

A borrower may defer repayment for hardship, as determined by the school (for example, if the borrower is facing a prolonged period of illness or unemployment). Interest will continue to accrue during the deferment.

Miscellaneous Deferments

A borrower of a Perkins Loan made before July 1, 1993 may also defer repayment (and interest will not accrue) during a period of

- up to one year if the borrower is a mother of a preschool-age child, provided the mother is going to work (or going back to work) at a salary that is no more than $1.00 above the minimum hourly wage or
- up to 6 months if the borrower is pregnant, or if he or she is taking care of a newborn or newly adopted child.[6]

Post-Deferment Grace Period

A borrower is entitled to a 6-month grace period after each of the deferments that apply to Perkins Loans (a post-deferment grace period) except after a hardship deferment. Neither the deferment nor the post-deferment grace period is counted as part of the 10-year repayment period.

DEFERMENTS EXCLUSIVE TO NDSLS MADE BETWEEN OCTOBER 1, 1980 AND JULY 1, 1993

A borrower of an NDSL made on or after October 1, 1980 but before July 1, 1993 may defer repayment for up to three years (and interest will not accrue) while the borrower is

- a member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard;
- a member of the National Guard or the Reserves serving a period of full-time active duty in the armed forces;
- an officer in the Commissioned Corps of the U.S. Public Health Service;
- a Peace Corps volunteer;
- a volunteer under Title I, Part A of the Domestic Volunteer Service Act of 1973 (ACTION programs);
- a full-time volunteer in service for a tax-exempt organization the Department has determined to be comparable to Peace Corps or ACTION;[7] or

6. This deferment is called a parental leave deferment. The borrower must be unemployed and not attending school and must apply for deferment within six months of leaving school or dropping below half-time status.

7. See the volunteer service criteria on page 2-40.

- temporarily totally disabled or unable to work because he or she must care for a **spouse** who is so disabled.[8]

Internship Deferment

A borrower of an NDSL made on or after October 1, 1980 and before July 1, 1993 may defer repayment for up to two years (and interest will not accrue) while the borrower is serving in an eligible internship. An eligible internship is one

- that requires the borrower to hold at least a bachelor's degree before beginning the internship program and

- that the state licensing agency requires the borrower to complete as a prerequisite for his or her certification for professional practice or service.

To qualify for an internship deferment, the borrower must provide the school with the following certifications:

- a statement from an official of the appropriate state licensing agency indicating that the successful completion of the internship is required by the state licensing agency as a prerequisite of certifying for professional practice or service;

- a statement from the organization where the borrower will be an intern certifying that attaining a bachelor's degree is required to be admitted in the program;

- a statement from the organization where the borrower will be an intern indicating that the borrower has been accepted into its internship program; and

- certification of the dates when the borrower is expected to begin and complete the program.

Hardship Deferment

A borrower may defer repayment for hardship, as determined by the school (for example, if the borrower is facing a prolonged period of illness or unemployment). Interest will continue to accrue during the deferment.

Post-Deferment Grace Period

For all NDSLs made on or after October 1, 1980 and before July 1, 1993, a borrower is also entitled to a 6-month post-deferment grace period after each of the deferments that apply to those loans except after a hardship deferment. Neither the deferment nor the post-deferment grace period is counted as part of the 10-year repayment period.

8. See the discussion of temporary total disability on page 2-40. A physician's statement is required.

DEFERMENTS EXCLUSIVE TO LOANS MADE BEFORE OCTOBER 1, 1980

For information on deferment provisions exclusive to loans made before October 1, 1980, see the *1994-95 Federal Student Financial Aid Handbook* or 34 CFR 674.37.

THE CONCURRENT DEFERMENT PERIOD

If a borrower is teaching or engaged in other services that qualify him or her for both deferment and cancellation, the loan deferment is considered to run concurrently with any period for which loan cancellation is granted.

DEFERMENT AND DEFAULT

A borrower is not entitled to a deferment on a defaulted loan. If the borrower signs a new repayment agreement, however, a school may grant a deferment even if the school has accelerated[9] the loan. The school would have to de-accelerate the loan before granting the deferment. The policy to permit deferments on defaulted loans applies to all requests for deferment received after February 3, 1988, regardless of the date the loan was made.

Before granting a deferment on a defaulted loan, the school may require the borrower to pay immediately late fees, collection costs, and some or all of the amount past due as of the date on which the school determined that the borrower had demonstrated eligibility for a deferment. The Department encourages schools to require the borrower to do so, thus "curing" the default.

The borrower must file for deferment on time and provide satisfactory documentation that he or she qualifies for the deferment. "On time" means by a deadline that the school establishes. **A school is not required to grant deferments on loans in default**; however, if a school does so, it is expected to calculate past-due accrued interest. If a school believes this is too burdensome, it may deny deferments on defaulted loans.

DEFERMENT VS. IN-SCHOOL ENROLLMENT STATUS

A borrower may neglect to notify a school that he or she has enrolled at least half time at another school before the initial grace period expires. Because the school would not have this information, the school would assume that the student's repayment period had started and might demand payment from the borrower. In such a case, a borrower often requests a deferment rather than a continuation of his or her in-school status. Because the borrower reenrolled at least half time before the initial grace period expired, repayment had not yet started, and a deferment would not be appropriate.

9. Acceleration is one of the penalties a school may impose on a defaulted loan. A loan that has been accelerated becomes due and payable immediately in one lump sum.

The borrower may submit proof at any time—even after a loan has been accelerated—that he or she reenrolled at least half time before the initial grace period expired and that the repayment period should have begun later than the date originally calculated. **The school must recalculate that date if it receives this proof**. The school must also deduct from the loan balance any interest accrued and any late charges added before the date the repayment period actually should have begun.

Note that the borrower remains responsible for payments that would have been due under the recalculated repayment period and that the school is not obligated to grant a deferment for any payments past due under that period.

Cancellation

A borrower may have all or part of his or her loan (including interest) canceled for engaging in public service, service in the Peace Corps or ACTION, or service in the military. Cancellation is also granted in case of the borrower's death, total and permanent disability, or—in some cases—bankruptcy. Definitions that apply to cancellation are discussed on pages 2-60 through 2-62.

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 National Direct Student Loan (NDSL) (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 service.

CANCELLATION PROCEDURES

The following procedures apply to any loan under this program:

- The borrower must apply 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 Department does not approve or supply cancellation forms. The borrower must submit the form to the school by the deadline the school establishes. The borrower must provide any documentation the school requests to show that he or she qualifies for cancellation. For information on documentation, see the appropriate cancellation category in this section.

- It is the school's responsibility to determine, based on the borrower's documentation, whether the borrower is entitled to have any portion of his or her loans canceled. This responsibility cannot be delegated.

- No portion of any loan may be canceled for services the borrower performed either before the date the loan was disbursed or during the enrollment period covered by the loan.

- Regardless of the repayment status of a loan, the school must cancel the loan upon receipt of proof of the borrower's death or upon the school's approval of a borrower's request for cancellation because of a permanent and total disability.

- Periods of loan deferment for public service that is also qualifying service for cancellation benefits are considered to run concurrently with any period for which a loan cancellation for such public service is granted.

- Defaulted loan amounts are not eligible for cancellation unless the only reason for the default was the borrower's failure to file a cancellation request on a timely basis. However, if the school has accelerated the account by the time the borrower files the necessary cancellation request forms, 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.

- No repayment a borrower makes during a period for which the borrower qualified for a cancellation may be refunded 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.

- No borrower who has received an education benefit under Subtitle D of Title I of the National and Community Service Act of 1990 may receive a cancellation of a Perkins Loan or NDSL.

TEACHING AND OTHER SERVICE CANCELLATIONS

Previously the first two cancellations were available only to borrowers of Perkins Loans or NDSLs made after July 1, 1987; the third cancellation was available only to borrowers of Perkins Loans or NDSLs made on or after November 29, 1990; and the remaining cancellations listed were available only to borrowers of Perkins Loans or NDSLs made on or after July 23, 1992. Effective October 7, 1998, the following cancellation provisions are available to any borrower under this program, regardless of when he or she borrowed and regardless of the terms of his or her promissory note. Any borrower under this program may be eligible to have up to 100 percent of the loan canceled for qualifying service as

- a full-time staff member in the educational part of a preschool program carried out under the Head Start Act (The cancellation rate is 15 percent of the original principal loan amount—plus the interest that accrued during the year—for each complete school year.);

- a full-time teacher in a public or nonprofit elementary or secondary school serving students from **low-income**[1] families;

- a qualifying full-time law enforcement or corrections officer;

1. See the definition of this term at the end of this section. An official Directory of designated low-income schools is published annually by the Department.

- a full-time special-education teacher, including teachers of **infants, toddlers, children, or youth with disabilities**[2] in a public or other nonprofit elementary or secondary school system[3];

- a full-time teacher in a public or other nonprofit elementary or secondary school in the fields of mathematics, science, foreign languages, or bilingual education or in any other **field of expertise**[4] that is determined by a state education agency to have a shortage of qualified teachers in that state;

- a full-time **nurse**[4] or **medical technician**[4] providing health care services;

- a full-time **qualified professional provider of early intervention services**[4] in a public or other nonprofit program under public supervision; or

- a full-time employee of an eligible public or private nonprofit child or family service agency who is providing or supervising the provision of services to both **high-risk children**[4] who are from **low-income communities**[4] and the families of such children.

With the exception of Head Start service (see the first cancellation provision above), the cancellation rate per completed academic year of full-time teaching or for each year of otherwise qualifying full-time service is

- 15 percent of the original principal loan amount—plus the interest that accrued during the year—for each of the first and second years;

- 20 percent of the original principal loan amount—plus the interest that accrued during the year—for each of the third and fourth years; and

- 30 percent of the original principal loan amount—plus any interest that accrued during the year—for the fifth year.

CRITERIA FOR TEACHER CANCELLATION

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 teaching full time in a **public or other nonprofit elementary or secondary school system** and must be **directly employed** by the school system. There is no provision for canceling Perkins Loans or NDSLs for teaching in postsecondary schools.

2. See the definition of this term at the end of this section.

3. For loans made before July 23, 1992, this provision replaces the "teacher of handicapped students" cancellation provision. A teacher of handicapped students/special education teacher is not required to teach in a low-income school to be eligible for cancellation.

4. See the definitions of these terms at the end of this section.

A teacher is a person who provides to students

- direct classroom teaching;
- classroom-type teaching in a non-classroom setting; or
- educational services directly related to classroom teaching.

Two examples of qualifying individuals for the third category are school librarians and school guidance counselors.

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

A person who provides one of the following services does not qualify as a teacher unless 1) that person is licensed, certified, or registered by the appropriate state education agency for that area in which he or she is providing related special educational services and 2) the services provided by the individual are 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.

For a borrower to be considered as teaching in a field of expertise, the majority of classes taught must be in the borrower's field of expertise. 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 a full-time professional provider of early intervention services, the borrower must be employed in a public or nonprofit program under public supervision.

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

It is not necessary for a teacher to be certified or licensed to receive cancellation benefits. However, the employing institution 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.

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 considered to be professionally employed on a full-time basis and, therefore, are not eligible for teacher cancellation benefits.

A borrower may receive teacher cancellation for services performed in a private academy if the private academy has established its nonprofit status with the Internal Revenue Service (IRS) and if the academy is providing elementary and/or secondary education according to state law.

A private elementary and/or secondary school does not necessarily need to be accredited for a borrower teaching there to qualify for teacher cancellation. However, the school must have established its nonprofit status with the IRS and must be licensed by the state (that is, must be providing elementary and/or secondary education according to state law).

A borrower may receive **Defense Loan** cancellation for teaching in a proprietary institution if that institution has established its nonprofit status with the IRS.

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

A borrower cannot receive teacher cancellation for teaching service performed in a Job Corps Project unless the teaching is considered to be conducted in an elementary or secondary school or school system.

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

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 in order 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 or two half years that are

- from different school years, excluding summer sessions,
- complete,
- consecutive, 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.

A borrower who is simultaneously teaching part time in two or more schools may request a cancellation based on teaching full time if he or she can obtain appropriate certification that he or she is teaching full time. The postsecondary school that made the loan may grant the cancellation 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;[5]
- 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;[6] 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 be determined that the teaching was full time.

Low-Income Schools

A cancellation based on teaching in a school serving students from **low-income** families may be granted only if the borrower taught in an eligible school that is listed in the *Directory of Designated Low-Income*

5. The consortium provides the certification of full-time teaching.

6. The employing school certifies the borrower's full-time teaching status.

Schools for Teacher Cancellation Benefits. The Department compiles and publishes this directory of low-income schools annually after consulting with each state's educational agency. The Department sends a copy of the directory to each school that participates in the Perkins Loan Program. The Department considers a school to be a low-income school only if 1) it is in a school district that qualifies for federal funding based on the large number of low-income families in the district and 2) more than 30 percent of the school's enrollment is made up of children from low-income families. The official 1998-99 Directory was issued to schools in October 1998.

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. If a list is not available before May 1 of any year, the Department may use the previous year's list to make the service determination for that year. Information about specific schools listed in the directory is available from

Ms. Sherraine Green
Campus-Based Programs Systems Division
Program Systems Service
Office of Postsecondary Education
U.S. Department of Education
600 Independence Avenue, SW, (ROB-3, Room 4051)
Washington, DC 20202-5447

Telephone: 202/708-5774

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.

Handicapped Children Definition

For the purposes of loan cancellation, handicapped children include those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually disabled, seriously emotionally disturbed, orthopedically impaired, autistic, have traumatic brain injury or specific learning disabilities, or are otherwise health-impaired children who require special education and related services because of their disabilities.

HEAD START CANCELLATION CRITERIA

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.

CHILD OR FAMILY SERVICES CANCELLATION CRITERIA

To receive loan cancellation for being employed at a child or family services agency, a borrower must be providing services **only** to high-risk children who are 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. The services provided to adults must be secondary to the services provided to the high-risk children. The Department has determined that an elementary or secondary school system or a hospital is not an eligible employing agency.

LAW ENFORCEMENT OR CORRECTIONS OFFICER CANCELLATION CRITERIA

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.

1 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 problems relating to 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.

2 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 officer or person whose principal responsibilities are unique to the criminal justice system and are essential in the performance of the agency's primary mission. The agency must be able to document the employee's functions.

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

where these functions are performed. Also, a borrower employed as a public defender does not qualify for cancellation benefits under this provision.

MILITARY SERVICE CANCELLATION

A borrower is also entitled to cancellation of up to **50 percent** of a Perkins Loan or NDSL for service in the U.S. Armed Forces in an **area of hostilities** or an **area of imminent danger** that qualifies for special pay under Section 310 of Title 37 of the U.S. Code. The cancellation rate for every complete year of qualifying service is 12 1/2 percent of the original principal loan amount plus any interest that accrued during the year. Previously, this cancellation was available only to borrowers of Perkins Loans or NDSLs made on or after July 1, 1972.

MILITARY CANCELLATION CRITERIA

To qualify for military cancellation, a borrower must be serving a period of full-time active duty in the armed forces (that is, the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard). A member of the National Guard or the Reserves serving a period of full-time active duty in the armed forces is also eligible to receive a military deferment. For a Perkins Loan or NDSL cancellation, the service in the armed forces must be in an **area of hostilities** or an **area of imminent danger** that qualifies for special pay under Section 310 of Title 37 of the U.S. Code. For Defense Loan cancellation, the service does not have to be in an area of hostilities or area of imminent danger. The borrower's Commanding Officer must certify the borrower's service dates. The cancellation rate of 12 1/2 percent of the original principal loan amount is for each **complete** year of service; service for less than a complete year or any fraction of a year beyond a complete year does not qualify.

VOLUNTEER SERVICE CANCELLATION

A borrower is entitled to cancel up to **70 percent** of the loan for service as a Peace Corps volunteer or volunteer under the Domestic Volunteer Service Act (ACTION program); an authorized official of the Peace Corps or ACTION program must sign the borrower's cancellation form to certify the borrower's service. Previously, this cancellation was available only to Perkins Loan borrowers, not to NDSL or National Defense Student Loan (Defense Loan) borrowers. The cancellation rate per year of service is

- 15 percent 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 percent 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.

DEATH AND TOTAL AND PERMANENT DISABILITY DISCHARGES

Regardless of the repayment status of a loan, the school that was the lender must cancel the unpaid balance of the loan, including interest, upon receipt of proof of the borrower's death or upon the school's approval of the cancellation request of a borrower who became permanently and totally disabled after receiving the loan. A determination of permanent and total disability must be based on medical evidence certified by a physician (a medical doctor or doctor of osteopathy, but not a doctor of naturopathic medicine). If a loan is canceled based on the borrower's permanent and total disability, the borrower cannot subsequently be required to repay the loan, even if the borrower's medical condition improves to the point that he or she is no longer disabled, unless the school can prove that the claim of disability was fraudulent.

DISABILITY DISCHARGE CRITERIA

Any Perkins Loan, NDSL, or Defense Loan will be canceled if the borrower dies or becomes permanently and totally disabled after receiving the loan. Permanent and total disability is the inability to work and earn money or to attend school because of an impairment that is expected to continue indefinitely or to result in death.

Even a 95 percent disability does not qualify the borrower for disability cancellation. Receiving Social Security disability benefits does not automatically qualify a borrower for permanent and total disability cancellation.

If a borrower becomes permanently and totally disabled, the school must decide whether to cancel the loan based on medical evidence (certified by a physician) that the borrower or his or her representative must furnish. This evidence must include statements from all physicians, hospitals, or agencies concerned with the case and should include certification that the criteria for permanent and total disability have been met. If a loan is canceled based on the borrower's permanent and total disability, the borrower cannot subsequently be required to repay the loan, even if the borrower's medical condition improves to the point that he or she is no longer disabled, unless the school can prove that the claim of disability was fraudulent. The Department does not approve or supply cancellation forms. In the case of a borrower's death, the school must receive a death certificate or other proof as required under state law.

CLOSED SCHOOL DISCHARGE

Effective October 1, 1998, a Perkins Loan or NDSL 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. A borrower whose loan was in default and then discharged under this provision reestablishes Student Financial Assistance (SFA) eligibility, provided he or she meets all other eligibility criteria. The loan holder

is required to report the discharge to the credit bureaus to which the previous loan status was reported.

Borrower Filing for Bankruptcy Protection

Dear Colleague Letter GEN-95-40, dated September 1995, and 34 CFR 674.49

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.

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) concerns the discharge of debts. A school should consult an attorney for the best advice in bankruptcy cases.

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 for loans made prior to July 23, 1992. 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.

Provisions of the Crime Control Act of 1990 extended from 5 years to 7 years the period of time a loan must be in repayment before it can be discharged under Chapter 7, 11, 12, or 13 of the Bankruptcy Code and provided that a Student Financial Assistance (SFA) loan is dischargeable during that same 7-year period only if the borrower proves that repayment would constitute an undue hardship. The regulations also reflect the changes made to the Bankruptcy Code by section 3007 of the Omnibus Budget Reconciliation Act of 1990; the regulations provide that a discharge under 1328(a) of the Bankruptcy Code does not discharge an education loan unless the loan entered the repayment period more than 7 years, excluding periods of deferment and forbearance, before the filing of the petition.

When Borrower Requests Discharge Based on Undue Hardship

If a borrower files for bankruptcy protection requesting discharge of a loan on the ground of undue hardship under Chapter 7, 11, 12, or 13 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), the school must follow the procedures discussed below.

If the loan has been **in repayment for 7 years or more** (excluding deferment and forbearance periods), the school may **not** oppose a discharge that has been requested on the ground of undue hardship.

If the loan has been **in repayment for less than 7 years**, the school must determine, 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 this would not be the case, 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. The school may compromise a portion of that amount, if necessary to obtain a judgment.

When a borrower has filed a request for discharge on the ground of undue hardship, if the school is required under the steps described above to oppose the borrower's request, the school may file a complaint with the court to obtain a determination that the loan is not dischargeable and to obtain a judgment on the loan.

Procedures When Borrower Requests Adjustment in Repayment

Under Chapter 13, the borrower may request an adjustment in repayment terms. The borrower proposes a repayment plan, which is then ruled on by the bankruptcy court. If the borrower's repayment plan proposes full repayment of the 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 loan obligation or to general unsecured claims.

If the borrower proposes to repay less than the total amount owed, 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. For a loan that entered repayment more than 7 years before the borrower filed for bankruptcy (excluding periods of deferment), 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) (see footnote on previous page), 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.

A school must resume billing and collection procedures after the borrower has received a discharge under 11 U.S.C. 1328(a) or U.S.C. 1328(b) unless (1) the court has found that repayment would impose an undue hardship or (2) the loan entered the repayment period more than 7 years before the filing of the petition and the borrower's plan made some provision regarding the borrower's loan obligation or general unsecured debts.

As stated earlier, a borrower is no longer required to establish eligibility for a new student loan by agreeing to repay a loan discharged in bankruptcy. As a result of the Bankruptcy Reform Act of 1994, effective October 22, 1994, a student may not be denied student financial assistance from SFA programs, including the Federal Perkins Loan Program, solely on the basis of a bankruptcy determination. If a student has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been determined by a court of law to be dischargeable in bankruptcy, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of a future loan from the Perkins Loan Program or other student loan programs. However, schools may continue to consider the student's **post-**bankruptcy credit history in determining willingness to repay the loan.

REIMBURSING AMOUNTS CANCELED

For Perkins Loans and NDSLs, the Department will reimburse each school every award year for the principal and interest canceled from its Perkins Loan Fund for all of the cancellation provisions except for death, total and permanent disability, and bankruptcy. 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.

DEFINITIONS

The following are definitions of terms used in this Chapter:

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(a)(1) of the Individuals with Disabilities Education Act;

Section 602(a)(1) defines "handicapped children" as children who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

Early intervention services. Those services defined in section 672(2) 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 and 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 from birth to age two, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act;

Section 672(1) of the Act defines infants and toddlers with disabilities as those who

- have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay or
- are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psychosocial development, or self-help skills.

The term **infants and toddlers with disabilities** may also include, at a state's discretion, individuals from birth to age two, inclusive, 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 672(2) of the Individuals with Disabilities Education Act;

Section 672(2) of that Act defines developmental services as those services that

- Δ are provided under public supervision;
- Δ 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;
- Δ are designed to meet a handicapped infants's or toddler's developmental needs in any one or more of the following areas:
  - ◊ physical development;
  - ◊ cognitive development;
  - ◊ language and speech development;
  - ◊ psychosocial development; or
  - ◊ self-help skills;
- Δ meet the standards of the state, including the requirements of this part;
- Δ include:
  - ◊ family training, counseling, and home visits;
  - ◊ special instruction;
  - ◊ speech pathology and audiology;
  - ◊ occupational therapy;
  - ◊ physical therapy;
  - ◊ psychological services;
  - ◊ case management services;
  - ◊ medical services only for diagnostic or evaluation purposes;
  - ◊ early identification, screening, and assessment services; and
  - ◊ health services necessary to enable the infant or toddler to benefit from the other early intervention services;
- Δ are provided by qualified personnel, including
  - ◊ special educators;
  - ◊ speech and language pathologists and audiologists;
  - ◊ occupational therapists;
  - ◊ physical therapists;
  - ◊ psychologists;

- ◊ social workers;
- ◊ nurses; and
- ◊ nutritionists; and

Δ are provided in conformity with an individualized family service plan adopted in accordance with Section 677 of the Individuals with Disabilities Education Act.

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

Due Diligence

PART 2 Chapter 6

Due diligence is the steps a school must take to collect Federal Perkins Loans and National Direct Student Loans (NDSLs). These steps 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 proceed to the second—and more intensive—stage of collection, which may include hiring a collection firm and/or litigating.

COMMUNICATION WITH THE BORROWER

Due diligence comprises all these procedures, but it can also be as basic as keeping the borrower informed of all program changes that affect his or her rights and responsibilities and responding promptly to the borrower's inquiries.

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 the information they have available about the borrower to those offices responsible for billing and collecting loans to assist them in determining the following information about the borrower:

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

Exit Interview

Contact with the borrower becomes even more important just before he or she leaves school, when the school must hold an exit interview to explain the borrower's responsibility for repaying the loan and to state when the first payment will be due and whether payments are to be made monthly, bimonthly, or quarterly. If individual interviews are not possible, group interviews are acceptable. The school must document its exit interviews.

During the interview, a borrower must be informed of the terms of the loan, the amount of the outstanding balance, and his or her obligation to repay according to the repayment schedule. The school must also make the borrower aware of the consequences of default,

including the possibility that his or her account may be referred to a collection firm, that the default will be reported to a national credit bureau, and that legal action may be taken to collect the amount owed.

A borrower must also be told his or her rights and responsibilities including

- his or her responsibility to inform the school immediately of any change in name, address, telephone number, Social Security Number, or driver's licence number;
- his or her rights to forbearance, deferment, cancellation, or postponement of repayment and the procedures for filing for those benefits (see Chapters 4 and 5 of this Part); and
- his or her responsibility to contact the school before the due date of any payment he or she cannot make.

The school must provide the following additional information during the exit interview by including it either in the borrower's promissory note or in some other written statement the school gives the borrower. A school that is unaware that a borrower has left school must attempt to provide the required information to the borrower in writing upon learning that the borrower has left:

- the name and address of the school to which the debt is owed and the name and address of the official or servicing agent where communications should be sent;
- the name and address of the party where payments should be sent;
- the estimated amount the borrower owes on the date the repayment period is scheduled to begin and the amount of the total debt (principal and interest);
- the interest rate and the projected total interest charges the borrower will pay;
- a discussion of the repayment schedule including the date the first installment is due, and the number, amount, and frequency of required payments;
- any special options for loan consolidation or other refinancing;
- a statement that the borrower may prepay all or part of the loan without penalty;
- a discussion of any fees that will be charged the borrower for not making payments on time;

Required Borrower Contact
34 CFR 674.42

- a description of any charges associated with default, such as liability for loan collection costs reasonably incurred by the school or the Department; and

- information about the borrower's rights to forbearance, deferment, cancellation or postponement of repayment and the procedures for filing for those benefits.

A school is no longer required to give borrowers information about the average indebtedness of students with Perkins Loans at that school.

The school must require the borrower to provide the following information during the exit interview, which the school must keep in its records:

- the borrower's expected permanent address after leaving school (regardless of the reason for leaving);

- the name and address of the borrower's expected employer after leaving school;

- the borrower's driver's license number;

- the address of the borrower's next of kin; and

- any corrections in the school's records relating to the borrower's name, address, Social Security Number, personal references, and driver's license number.

At the time of the exit interview, the borrower must sign the repayment schedule, and the school must give the borrower copies of the signed schedule and the signed promissory note. As previously noted, the school must keep the original signed promissory note and repayment schedule in a locked, fireproof container until the loan is repaid or until the originals are needed to enforce collection of the loan. If the originals are released for enforcement purposes, the school must keep certified true copies of the documents released.

If the school discovers that a borrower has left without having had an exit interview, the school must either contact the borrower and personally give him or her the information listed on the previous pages or mail this information. The school must also provide the borrower a copy of the signed promissory note and two copies of the repayment schedule, one of which the borrower must sign and return to the school.

Contact During Grace Periods

The school must contact the borrower during both initial and post-deferment grace periods to remind him or her when repayment will begin or resume. For a loan with a nine-month initial grace period, the school must contact the borrower three times during the grace period. For a loan with a six-month initial grace period, the school must

contact the borrower twice during that period. Most loans also have **post-deferment** grace periods of six months. For such a loan, the school must also contact the borrower twice during any post-deferment grace period. The chart below shows the length of initial and post-deferment grace periods for NDSLs and Perkins Loans.

Grace Periods (Borrowers Attending at Least Half Time)

Type of Grace Period	Perkins Loans	NDSLs made on or after 10/1/1980	NDSLs made before 10/1/1980
Initial	9 months	6 months	9 months
Post-Deferment	6 months	6 months	none

The **first contact** must be **90 days** after any grace period (initial or post-deferment) begins. The school must remind the borrower of the responsibility to repay the loan and must send the borrower information about the total amount to be repaid (or remaining to be paid, if a payment has been made in the past). This information must include the amount of principal and interest over the remaining life of the loan and the due date and amount of the first payment (or next payment, if a payment has been made previously).

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. The second contact is timed to coincide with the first billing notice for a loan with a six-month grace period (30 days before the first payment is due). These two notices may be combined.

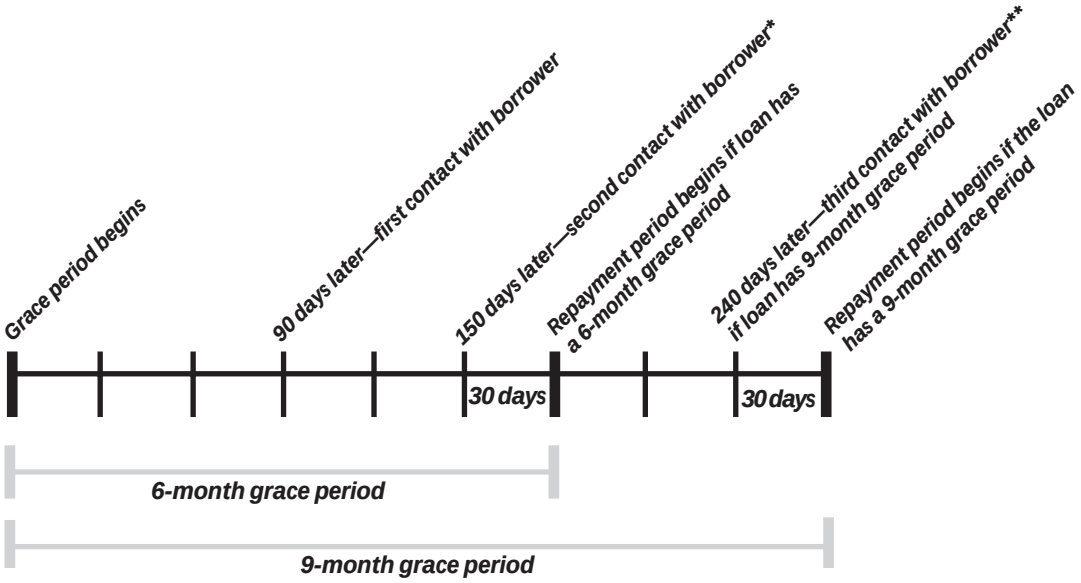
For a borrower with a **nine-month** initial grace period, the school must make a **third contact 240 days** after the grace period begins to remind the borrower of the date and amount of the first payment. Like the second contact for a loan with a six-month grace period, this 240-day contact is timed to coincide with the first billing notice. Again, the school may combine the two notices.

BILLING PROCEDURES

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.

Contact with Borrower During Grace Period



**30-day billing notice must be sent to borrower at the same time if loan has 6-month grace period.*

***30-day billing notice must be sent to borrower at the same time if loan has 9-month grace period.*

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.[1]

If a payment is overdue and the school has not received a request for forbearance, deferment, postponement, or cancellation, the school must send the borrower an **overdue notice** within **15 days** after the due date.

For loans made for periods of enrollment beginning on or after January 1, 1986, schools are required to impose a late charge when the borrower's payment becomes overdue.[2] 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 percent of the installment payment most recently due.

The school must also impose a late charge if the borrower's payment is overdue and the borrower has not filed a complete request for forbearance, deferment, cancellation, or postponement on time. To be considered complete, the request must contain enough information for the school to determine whether the borrower is entitled to the relief requested.

1. If the borrower elects to make payments by means of an electronic transfer of funds from the borrower's bank account, the school is not required to send the borrower a statement of account at least 15 days before the due date of each subsequent payment. However, the school must send the borrower an annual statement of account.

2. The mandatory late charges do not apply retroactively to loans made before July 1, 1987, but would apply to any NDSL borrower who has a re-signed revised promissory note.

Optional Penalty Charge Before 1/1/86
34 CFR Appendix E

Late charges on loans made for periods of enrollment that began on or after January 1, 1986 may be assessed only during the billing process; they may not be imposed once the school begins collection procedures. For a borrower who repays the full amount of past-due payments, the school may waive any late charges that were imposed.

Schools are authorized but not required to assess a penalty 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 charges on these loans may be assessed only during the billing process.

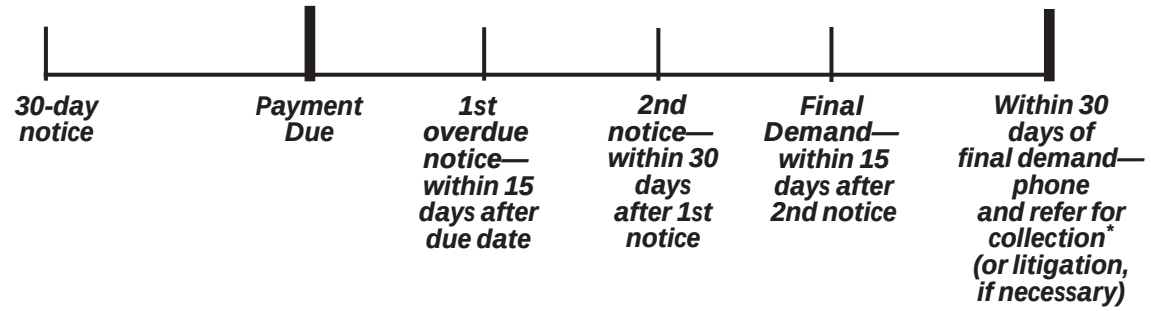
The school may either add the penalty or late charge to the principal amount of the loan as of the first day the payment was due or may include the charge with the next payment that is scheduled after the date it notifies the borrower that the charge must be paid in full by the next payment due date. Schools may wish to use the first overdue notice to inform the borrower of the late charge.

If the borrower does not satisfactorily respond to the first overdue notice, the school must continue to contact him or her. A **second overdue notice** must be sent within **30 days** after the first. If there is still no response, a **final demand letter** must be sent within **15 days** after the second notice. The letter may be (but does not have to be) sent by certified mail. The final demand letter must inform the borrower that unless the school receives a payment or a request for forbearance, deferment, postponement, 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.

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

If the borrower does not respond to the final demand letter within 30 days, the school 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, the school may be able to avoid the more costly procedures of collection.

Billing Procedures



** The school can use the services of the Department's Default Reduction Assistance Project (DRAP) before the loan goes to a collection firm; DRAP is discussed in Section 7 of this Part.*

If the school calls a number and there is no answer, the school should make at least one other attempt to reach the borrower on a different day and at a different time. If the borrower has an unlisted telephone number, the school must make reasonable attempts to obtain it by contacting sources such as the borrower's employer or parents. If the school is still unsuccessful, it should document that fact in its files.

If the borrower does not respond satisfactorily to the final demand letter, the school must try and recover the amount owed from the borrower. For loans made prior to July 23, 1992, the school must also try to collect the amount owed from any endorser of the loan. In an effort to recover the loan from one party or the other, a school often sends the endorser a copy of the final demand letter that was sent to the borrower and copies of all future communications about the borrower's debt, including dunning letters. For loans made on or after July 23, 1992, an endorser is no longer required.

The school may choose to accelerate a loan if the borrower misses a payment or does not file for deferment, forbearance, postponement, or cancellation on time. Acceleration means making payable immediately 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, the school must subsequently send the borrower a second 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 a school plans to assign the loan to the Department for collection, the school 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 institutional offices and
- review telephone directories or check with information operators in the area of the borrower's last known address.

If these methods are unsuccessful, the school must either use its own personnel to try to locate the borrower (employing and documenting efforts comparable to commercial skip-tracing services), or must use a commercial skip-trace firm. The school may elect to use the Internal Revenue Service skip-tracing service provided through the Department, discussed below.

If the school still cannot locate the borrower after taking these steps, it must continue to make reasonable attempts at least twice a year until

- the loan is recovered through litigation;
- the account is assigned to the Department; or
- the account is written off. (See Chapter 7 of this Part.)

To help locate a borrower whose collection notices are returned undelivered, a school may participate in the IRS/ED skip-tracing service. The Higher Education Amendments of 1992 eliminated the **requirement** that schools use the IRS/ED skip-tracing service in carrying out the provisions of due diligence. However, the Department strongly encourages schools to continue to use this service. The IRS/ED skip-tracing service is one of the most powerful tools available to schools for locating defaulted borrowers. The Department will continue to send schools that participate in the Perkins Loan Program periodic Dear Colleague letters that give instructions for completing the report.

To maintain eligibility to participate in the IRS/ED skip-tracing service, each participating school must submit an annual Safeguard Activity Report, in accordance with the IRS publication 1075. If a school fails to submit the Report, it will lose its eligibility to participate in the service. The reports help ensure that procedures are established and utilized to safeguard the names and addresses of defaulted borrowers under the Perkins Loan Program. General questions should be directed to the Department's Program Systems Service, Campus-Based Programs Systems Division at 202/708-6726.

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.

Credit Bureau Reporting

The **first** step a school must take in the collections process is to report a defaulted loan account to a national credit bureau organization. Effective October 1, 1998, a school is allowed to report the default to a credit bureau with which it has an agreement or to a credit bureau with which the Department has an agreement. Previously, a school was required to report the default to a credit bureau with which the Department has an agreement. (The debtor has the right to appeal the accuracy and validity of the information reported to the credit bureau.)

The school must report any changes in the status of the borrower's loan account to the same national credit bureau to which the school originally reported the default. The school must use the reporting procedures required by that credit bureau. The school must also respond within one month to any inquiry received from that or any other credit bureau about the information reported on the loan amount.

A promissory note for a Federal Perkins or NDSL made by a school on or after July 23, 1992 must state that the school is required to disclose to any one national credit bureau the amount of the loan made to the borrower and that if the borrower defaults on the loan, the school must disclose that the borrower has defaulted, along with other relevant information, to the same national credit bureau to which it originally reported the loan.

The Department has entered into an agreement with each of the four national credit bureaus listed below:

- Trans Union—
  contact Customer Service: 1-800/888-4213
- Experian (formerly TRW)—
  contact Customer Service (ext. 3): 1-800/831-5614
- CBI Equifax—ask for the telephone number of the CBI Equifax "territory" servicing your school: 1-770/740-4376
- Consumer Credit Association, Inc.—
  contact the Manager of Data Management Services (ext. 2101): 1-713/589-1190

Each credit bureau charges a fee for its services. These fees differ from national credit bureau to national credit bureau. These bureaus also have affiliated credit bureaus, which 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 cost associated with reporting Perkins Loan disbursements to a national credit bureau may not be charged against the Perkins Loan Fund. However, the school may use its administrative cost allowance to pay for these charges. Collection costs, which include the costs associated with reporting a defaulted Perkins Loan borrower to a national credit bureau, must be charged to the borrower. The fund can be charged for these costs only in relation to the amount collected from the bureau, as described later in this Chapter.

The Privacy Act authorizes disclosure of a borrower's account information to creditors without the borrower's consent if such a disclosure would help enforce the terms and conditions of the loan. This authorization permits the release of information concerning loans in both default and nondefault status, and the authorization applies whether the reporting takes place at the time the loan is being disbursed or at the time the loan is in default status. 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.

The Fair Credit Reporting Act allows a borrower/debtor to appeal the accuracy and validity of the information reported to the credit bureau and reflected in the credit report. The school should be aware of this right and should be prepared to handle and potentially accept the borrower's correction of information in accordance with the provisions of the act.

Attempting to Collect

The **second** step the school must take in the collections process is to attempt collection by either using its own personnel or 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, postponement, 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.

If a collection firm (retained by a school as part of its second effort to collect) 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 above, the school must continue to make annual 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.

A school may cease collection activity on a defaulted account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs and late charges if the borrower has been billed for this balance. The school will not have to exercise required due diligence even though interest will continue to accrue and may put the account over $25.00. The school must document that it ceased collection activity when the account was under $25.00. However, the school will not be able to assign the account to the Department, and 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 is still in default and ineligible for Student Financial Assistance (SFA) funds.

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. Such an account will be included in the school's cohort default rate, if applicable. The borrower is still in default and ineligible for additional SFA funds.

A school may write off an account with a balance of **less than $5.00**, including outstanding principal, accrued interest, collection costs and late charges. If the school writes off an account, the school may no longer include the amount of the account as an asset of the Federal Perkins Loan fund. If a school receives a payment from a borrower after the loan has been written off, it must deposit that payment into the fund.

The school must determine the amount of collection costs to be charged to the borrower for address searches, collection, litigation, use of contractors for collection of the loan, and/or bankruptcy proceedings. The collection costs must be based on 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. The school must assess all reasonable collection costs against the borrower without regard to any provisions of state law that would conflict with the above provisions.

Litigation
HEA 484(a)

For loans made from 1981 through 1986, many promissory notes contain a limitation on the amount of costs that can be recovered from the borrower (25 percent of the outstanding principal and interest due on the loan). As this provision has not been applicable since the beginning of the 1987-88 award year, if these borrowers ask for new advances, the Department strongly encourages schools to issue new promissory notes without this provision and to require the provisions of the new note to apply to repayment of previous advances. The borrower will then be liable for **all** collection costs on all of his or her outstanding loans borrowed under this program. A school should note, however, that advances made prior to the signing of the new note do not qualify for new deferment and cancellation benefits.

The school determines what collection costs are reasonable, as long as they are based either on actual costs the school incurs for the particular borrower or on average costs incurred in collecting loans in similar stages of default. The school should explain to the borrower how it calculates collection costs, based on the cost analysis used to support charges of these costs to the Perkins Loan Fund. The school must be able to document the basis for the costs assessed.

Actions a School May Take to Avoid Litigation

Before filing suit on a loan, a school 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 a precondition. The amount waived may be charged to the Perkins Loan Fund.

Another alternative is for the school to waive a **portion** of the collection costs on a loan if doing so will give the school greater flexibility in negotiating repayment. The school may waive a percentage of the collection costs, applicable to the amount then due on the loan, equal to the percentage of the past-due balance the borrower repays within 30 days of entering into a written repayment agreement with the school. For example, if the borrower repays one-half the outstanding balance on a loan within 30 days of the agreement, the school may waive one-half of the collection costs incurred through the date of that payment. The amount waived may be charged to the Perkins Loan fund.

As stated earlier, a school may write off an account with a balance of **less than $5.00**, including outstanding principal, accrued interest, collection costs and late charges but may no longer include the amount of the account written off as an asset of the Perkins Loan fund.

A school may compromise on the repayment of a defaulted loan if the school has fully complied with all due diligence requirements and the student borrower pays in a single lump-sum payment

- at least 90 percent of the outstanding principal balance on the loan;

- all interest due; and

- any collection fees due.

The federal share of the compromise repayment must bear the same relation to the school's share of the compromise repayment as the Federal Capital Contribution (FCC) to the school's loan fund under this part bears to the school's Institutional Capital Contribution (ICC) to the fund.

The Federal Family Education Loan (FFEL) Program regulations and the William D. Ford Federal Direct Loan Program regulations allow a borrower to receive a Federal Consolidation Loan or a Direct Consolidation Loan, respectively, that could include a defaulted Perkins Loan, NDSL, or Defense Loan. Federal Consolidation Loans and Direct Consolidation Loans are discussed in *SFA Handbook: Direct Loan and FFEL Programs Reference*. The amount eligible for consolidation under either program 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 determine at least once a year whether all the conditions listed below are met. If so, 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 $200;

- 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;[3]

- the borrower does not have a defense that will bar judgment for the school;[4] and

- the expected cost of litigation (including attorneys' fees) does not exceed the amount that can be recovered from the borrower.

3. Defining "a reasonable period of time" is left to the school.

4. If the school determines that the borrower has a partial defense, it must weigh the costs of litigation against the costs of recovery based on the amount of the enforceable portion of the debt.

Even if all the above conditions are **not** met, the school may sue if it chooses to do so. No federal or state statute of limitation can apply to enforcement actions to collect Perkins Loans or NDSLs.

The 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. The school is 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 below.

If the school cannot collect a payment after following all collection procedures (including litigation, if required), it may, with the Secretary's approval, assign the account to the Department for collection. A school may assign a loan to the Department for collection if the amount outstanding is **$25 or more**, including principal, interest, collection costs, and late charges.

If the school has a cohort default rate of more than 20 percent as of June 30 two years before the school submits an assignment request, the school must provide documentation to the Department that it has complied with all of the due diligence requirements discussed in this chapter.

Deposit of Funds Collected

A school must deposit any funds collected into an interest-bearing bank account. A collection agency, collection attorney, or loan servicer is required to deposit funds collected into an interest-bearing account only if the agency, attorney or servicer holds such amounts for more than 45 days. The account must be insured by an agency of the federal government, secured by collateral of reasonably equivalent value, or invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

A school may deduct from the interest earned any bank charges incurred as a result of maintaining the fund assets in an interest-bearing account, such as service charges, and deposit only the net earnings into the fund.

Costs Chargeable to the Federal Perkins Loan Fund

The following costs of actions a school takes in an attempt to collect past-due payments on a loan must be charged to the borrower: billing costs associated with past-due payments (not routine billing costs) and costs of address searches, collection, litigation, the use of contractors, and bankruptcy litigation.

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. 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 for only the unpaid portion of the actual cost of the calls.

Only the collection costs discussed below that are **waived or not paid by the borrower** may be charged to the Perkins Loan fund:

- **Collection costs waived**. As stated earlier, a school may waive all collection costs on a loan if the borrower, within 30 days of entering into a new repayment agreement, makes a lump-sum payment of the entire amount outstanding or may waive a percentage of the collection costs equal to the percentage the borrower pays on the amount outstanding on the loan within 30 days of entering a new repayment agreement. The amount waived may be charged to the fund.

- **Cost of a successful address search**. A reasonable amount for the cost of a successful address search, if not paid by the borrower, may be charged to the fund provided that the school either used a commercial skip-trace service or its own personnel, employing methods comparable to commercial skip-tracing practices. Defining a reasonable amount is left to the school.

- **Cost of reporting defaulted loans to credit bureaus**. The following costs not paid by the borrower may be charged 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.

- **Collection costs**. Collection costs not paid by the borrower may be charged to the fund if they do not exceed—for first collection efforts—30 percent of the total principal, interest, and late charges collected and—for second collection efforts—40 percent of the principal, interest, and late charges collected. The school must reimburse the fund for collection costs initially charged the fund but subsequently paid by the borrower.

- **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, but must not exceed the sum of

  Δ court costs specified in 28 U.S.C. 1920;

  Δ other costs incurred in bankruptcy proceedings in taking actions required or authorized under 34 CFR 674.49;

  Δ 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 percent of the total amount of judgment obtained on the loan; and

  Δ 40 percent of the total amount recovered from the borrower in any other proceeding.

- **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 percent** of the amount of principal, interest, and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

For audit purposes, a school must support costs charged to the fund with appropriate documentation including telephone bills and receipts from collection firms. 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 successful, the school may charge the fund for the costs associated with them under the conditions stated previously. Because the school incurs no costs if these activities are not successful, it may not charge the fund for them unless they are successful.

As stated earlier, a school may write off a student's account if the total amount owed on the account is less than $5.00. "Total amount owed" means outstanding principal, accrued interest, collection costs, and late charges. If the school writes off an account, it no longer includes it as an asset of the fund. If the school receives a repayment from the borrower after the loan has been written off, the school must deposit it into the fund.

Using Billing and Collection Firms

The school may use a contractor for billing or collection, but the school is still responsible for complying with the Subpart C 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 canceling, postponing, or deferring repayment, granting forbearance, extending the repayment period, and safeguarding the funds collected.

A school using a billing service may not use a collection firm that owns or controls the billing service or is owned or controlled by the billing service. In addition, a school 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.

A school using either a billing service or a collection firm must ensure that the service or firm issues, at least quarterly, a statement showing the activities for each borrower, such as amounts collected or changes in the borrower's name, address, telephone number, or Social Security Number, if known. The service or firm must also give the school, at least quarterly, a list of charges for skip-tracing activities and telephone calls.

The school must also ensure that the billing service or collection firm instructs the borrower either to mail payment checks to the school directly or to a bank where a lock-box is maintained for the school. Alternatively, the service or firm may deposit the funds into an interest-bearing institutional trust account.

If a billing service or a collection firm is depositing funds received directly from the borrower into an institutional trust account, this institutional trust account must be an interest-bearing account if those funds will be held for longer than 45 days. A billing service is not permitted to deduct its fees before depositing the amount it receives from borrowers. A collection firm may deduct its fees before depositing the funds it receives from borrowers if the school authorizes it to do so.

The firm may commingle in its accounts the funds collected as long as it can identify the interest earnings and the amount collected by the institution. If a **collection** firm chooses this last procedure, it may, **if the school authorizes it,** deduct its fees before depositing the amount collected. A **billing** service may **not** deduct its fees from the amount it receives from borrowers.

Just as schools are required to keep adequate fidelity bond coverage to protect the government's interest in the Student Financial Assistance (SFA) funds they receive, it is appropriate to ensure the same sort of protection from third parties who handle Perkins Loan Program funds for the school. Accordingly, a school must ensure that its billing service and collection firm maintain a fidelity bond or comparable insurance to protect the accounts they service. Billing services (and **collection firms not authorized to deduct their fees** from borrowers' payments) must be bonded or insured in an amount not less than the amount of funds the school expects to be repaid in a two-month period on the accounts it refers.

Collection firms authorized to deduct their fees from borrowers' payments must be bonded or insured:

1 If the amount the school expects to be repaid in a two-month period is **less than $100,000**, the collection firm must be bonded or insured in one of the following amounts, whichever is **less:**

- Δ 10 times the amount the school expects to be repaid on accounts it refers to the firm during a two-month period **or**
- Δ 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 accounts).

2 If the amount the school expects to be repaid in a two-month period is **$100,000 or more**, the collection firm must be bonded or insured in an amount not less than the amount of funds the school can reasonably expect to be repaid during that two-month period. **The bond or insurance must name the school as**

beneficiary. (This is not a requirement when the payments expected in a two-month period are less than $100,000.)

The school must review annually 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.

Default

PART 2
Chapter 7

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." A school is required to comply with the due diligence regulations before resorting to litigation. Due diligence procedures are discussed in Chapter 6 of this Part.

REPORTING A DEFAULT TO CREDIT BUREAUS

A school must report a defaulted loan account to a national credit bureau organization. Effective October 1, 1998, a school is allowed to report the default to a credit bureau with which it has an agreement or to a credit bureau with which the Department has an agreement. Previously, a school was required to report the default to a credit bureau with which the Department has an agreement. A school must also report any change in account status to the same national credit bureau to which it originally reported the default, according to the reporting procedures of the credit bureau. If the school receives an inquiry from any credit bureau about the information reported on the loan, the school must respond to the inquiry within one month of its receipt.

The debtor has the right to appeal the accuracy and validity of information reported to the credit bureau. For more information about reporting Perkins Loans or National Direct Student Loans (NDSLs) to a national credit bureau, see Chapter 6 of this Part.

DEFAULT AND STUDENT ELIGIBILITY

Regulations specify that, to be eligible to receive federal student aid, a student must not be in default and must **certify** that he or she is not in default on any SFA loan. This certification is found on the 1999-2000 *Free Application for Federal Student Aid* (FAFSA). Effective October 1, 1998, a defaulted borrower who makes six on-time consecutive monthly payments reestablishes his or her eligibility for federal student aid (assuming the borrower meets all other eligibility criteria). The borrower may obtain this benefit only once. The loan is still considered to be in default and will continue to be reported as defaulted to a credit bureau. Previously, a borrower who had made "satisfactory arrangements to repay" a defaulted loan reestablished his or her eligibility for federal student aid (assuming the borrower met all other eligibility criteria). The term "satisfactory arrangements to repay" was defined as the "establishment of a new written repayment agreement and the making of one payment each month for six consecutive months."

Default Reduction Assistance Project
Dear Colleague Letter CB-94-7

A student who is in default but has made six consecutive on-time payments as described above will receive a comment on his or her SAR that says

> "WARNING: Our records indicate that you are in DEFAULT on a federal student loan held by the U.S. Department of Education [or a state guaranty agency]. Since you have made satisfactory arrangements to repay this loan, you may be eligible to receive additional federal student aid at this time. However, if you fail to make scheduled payments, you will be denied future federal student aid."

A borrower also reestablishes eligibility if he or she repays the loan in full. A borrower who satisfies any of the conditions that remove his or her loan from the school's cohort default rate (see cohort default rate discussion below) becomes eligible for additional Perkins Loans.

A loan that is discharged in bankruptcy is not considered to be in default for the purpose of obtaining further federal student aid.

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. 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. However, if a judgment is satisfied **involuntarily** (such as by garnishing the borrower's wages), a school should consider this as evidence of unwillingness to repay and should deny further loan assistance to the borrower.

A Federal 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. 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. The loan holder must report to credit bureaus that the loan has been discharged.

The Federal Family Education Loan (FFEL) and William D. Ford Federal Direct Student Loan (Direct Loan) Program regulations allow a borrower to receive a Consolidation Loan that could include a defaulted Perkins Loan. Once the defaulted loan is consolidated, it is no longer considered to be in default. A defaulted loan that is being repaid under a **court order** would remain in default status until paid and is not eligible for consolidation.

DEFAULT REDUCTION ASSISTANCE PROJECT

To assist schools in bringing defaulted borrowers into repayment, the Department has established the Default Reduction Assistance Project (DRAP). Under DRAP, a school can request that the Department send a borrower any of three letters designed to warn the student of the seriousness of default. The Department provides these

Safeguard Activity Report
Dear Colleague Letter CB-96-15 (LD), dated July 1996

services at no cost to the school. Participation in DRAP is voluntary. General questions about DRAP should be directed to the Campus-Based Programs Systems Division. The telephone number is (202) 708-6726. 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.

Although schools are no longer required to use the IRS/ED skiptracing service for carrying out the due diligence provisions of the Perkins Loan Program, the Department strongly encourages schools to continue to use this service. The IRS/ED skiptracing service is one of the most powerful tools available to schools for locating defaulted borrowers. In order to maintain eligibility to participate in the IRS/ED Skiptracing Service, each school that participates must submit an annual Safeguard Activity Report in accordance with IRS Publication 1075. If a school fails to submit the report, it will lose its eligibility to participate in the service. The reports help ensure that procedures are established and utilized to safeguard the names and addresses of defaulted borrowers under the Perkins Loan Program. General questions should be directed to the Department's Program Systems Service, Campus-Based Programs Systems Division. The telephone number is 202/708-6726.

COMPROMISE OF REPAYMENT OF DEFAULTED LOAN

To encourage repayment, a school may compromise on the repayment of a defaulted loan if the school has fully complied with all due diligence requirements discussed in Chapter 6 of this Part and if the borrower pays in a single lump-sum payment

- 90 percent of the outstanding principal balance on the loan;
- the interest due on the loan; and
- any collection fees due on the loan.

The federal share of the compromise repayment must bear the same relation to the school's share of the compromise repayment as the Federal Capital Contribution (FCC) bears to the Institutional Capital Contribution (ICC).

CALCULATING A SCHOOL'S COHORT DEFAULT RATE

A school's cohort default rate is calculated for a particular year based on information the school provides on the annual Fiscal Operations Report.

The term "cohort default rate" means (for any award year in which 30 or more current and former students at the school enter repayment on a loan received for attendance at that school) the percentage of those current and former students who enter repayment in that award

240/270-Day Delinquency Example

If a borrower's loan is in default for at least 240/270 consecutive days and an authorized period of deferment begins after the 239th day past due, the loan would be counted as a default in the school's cohort default rate even if the loan is in a deferred status on June 30. Once the loan is 240/270 days past due, bringing it below 240/270 days past due or even bringing it current will not eliminate the loan from the cohort default rate. Because a borrower is not billed during an authorized period of deferment, the delinquency would not increase during the deferment.

year on the loans received for attendance at that school and who default before the end of the following award year.

For any award year in which **less** than 30 current and former students at the school enter repayment on a loan received at the school, "cohort default rate" means 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.

Each school's 1999-2000 *Fiscal Operations Report and Application to Participate* (FISAP) lists the cohort default rate that affects the school for the 1999-2000 award year. We will refer to that rate as the school's current cohort default rate. This rate (for schools with at least 30 borrowers entering repayment each year) was calculated by computing the number of borrowers who entered repayment between July 1, 1996 and June 30, 1997. 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.

The denominator in the calculation is the number of borrowers entering repayment during the specified award year (1996-97 for the 1999-2000 FISAP). In calculating the default rate, each loan is attributed only to the school that made the loan.

The numerator in the calculation is the number of people in the denominator who were in default as of the end of the following award year. In calculating a school's current cohort default rate, the numerator is the number of people in the denominator who were in default at the end of the 1997-98 award year (June 30, 1998). For purposes of that calculation, as of June 30, 1998, a borrower must have been in default for at least 240 consecutive days for monthly payments or 270 consecutive days for other installments. Even if the school had paid off the loan, the borrower still had to be included in this calculation. However, borrowers who had made satisfactory arrangements to repay the loan could be excluded from the numerator.

LOANS INCLUDED IN COHORT DEFAULT RATE

The criteria listed below determine which defaulted loans must be included in the formula to determine a school's cohort default rate:

- A borrower must be 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.[1] This borrower must be included regardless of the loan's status on June 30 of the second year of the cohort period.

1. Once the loan is 240/270 days delinquent, bringing the defaulted loan to less than 240/270 days delinquent or even bringing it current will not eliminate the loan from the cohort default rate.

- A loan is considered to still be in default if the school, its owner, agency, contractor, employee, or any other entity or individual affiliated with the school makes a payment to prevent the borrower from defaulting.

- If a borrower pays a past-due loan in full, the loan will not be included in the school's cohort default rate.

- A defaulted loan on which the borrower has voluntarily made six on-time, consecutive monthly payments, has voluntarily made all payments due, has received a deferment or forbearance that predates the 240/270-day past-due status, or has satisfied conditions the Department determines is **not** considered to be in default for the purpose of determining a school's cohort default rate.

- A defaulted loan that the borrower has repaid in full, rehabilitated, or canceled is **not** considered to be in default for the purpose of determining a school's cohort default rate.

- In the case of a student who has attended and borrowed at more than one school, the student and his or her subsequent repay–ment or default are attributed to the school where the student received the loan that entered repayment in the award year.

- A defaulted loan that has been assigned to the Department is counted in determining a school's cohort default rate if the loan entered repayment during the appropriate time period. Assignments of loans to the Department no longer lower a school's default rate. In addition, the status of a loan that has been assigned to the Department is still considered in default until the loan is paid in full, even if the borrower has made satisfactory arrangements to repay the defaulted loan in order to qualify for additional aid from Student Financial Assistance (SFA) programs.

- A loan that is 24 days or more past due but on which the school has granted a retroactive forbearance (after providing the necessary documentation to the school) is considered to be in default only for the purpose of determining a school's cohort default rate. The loan is not considered to be in default for the purpose of determining the borrower's eligibility for additional federal student aid.

- As a result of the Higher Education Amendments of 1998, a school may no longer exclude from its cohort default rate improperly serviced loans.

Applying Payment to Oldest Dollars First Example

Johnny's monthly payment amount is $50. He has made no payments for 5 months, making the loan 150 days past due. Johnny then makes one $50 payment. Caravello College applies the payment to cover the first month's payment that was overdue, reducing the loan's past-due status from 150 days to 120 days because the earliest past-due payment is now 4 months old. The calculation of the number of days overdue begins with the oldest dollar past due.

Occasional Payment/Never Becoming Current Example

Kelly's oldest dollar is 120 days past due. She does not make any additional payments for 90 days, making the oldest dollar 210 days past due. Kelly then makes a $50 payment, reducing the past-due status to 180 days. Another 60 days elapse without Kelly making a payment, bringing the oldest dollar to 240 days past due. At that point, the loan would be counted in the school's cohort default rate even if subsequent payments reduce the past-due status to less than 240 days.

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

The following rules are used in calculating 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 cohort 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 included in the cohort default rate calculation.
- 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, note that 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.

COHORT DEFAULT RATE FOR A SCHOOL WITH MORE THAN ONE LOCATION

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.

If a school changes status from a branch of one school to a freestanding or independent school, the Department determines the cohort default rate based on the school's status as of July 1 of the award year for which the rate is being calculated.

If an independent school becomes a branch of another school or merges with another independent school, the Department determines the cohort default rate based on the combined number of students from both schools who enter repayment during the applicable award year and the combined number of students from both schools who default during the applicable award years. The new rate applies to the new consolidated school and all of its current locations.

If a school changes status from a branch of one school to a branch of another school, the Department determines the cohort default rate based on the combined number of students from both schools who enter repayment during the applicable award year and the combined number of students from both schools who default during the applicable award years from both schools in their entirety.

If a school has a change in ownership that results in a change in control, the Department determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years at the school under both the old and new control.

PENALTY FOR SCHOOLS WITH HIGH COHORT DEFAULT RATES

If a school's cohort default rate meets the following levels, a default penalty is imposed on the school, as described below:

- If a school's cohort default rate equals or exceeds 15 percent, it must establish a default reduction plan;
- If the school's cohort default rate equals or exceeds 20 percent but is less than 25 percent, the school's FCC will be reduced by 10 percent;
- If the school's cohort default rate equals or exceeds 25 percent but is less than 30 percent, the school's FCC will be reduced by 30 percent;
- If the school's cohort default rate equals or exceeds 30 percent, the school's FCC will be reduced to zero.

The following changes are a result of the Higher Education Amendments of 1998:

- For years preceding fiscal year (FY) 2000, current default penalties remain in place, except that a school with a default rate of less than 20 percent and less than 100 students with loans for that academic year is exempt from default reduction plan filing requirements.

- For FY 2000 and succeeding fiscal years, a school with a cohort default rate of 25 percent or more will have a default penalty of zero.

- For FY 2000 and succeeding fiscal years, no school is required to file a default reduction plan.

- For FY 2000 and succeeding fiscal years, a school with a cohort default rate of 50 percent or more for the three most recent years is ineligible to participate in the 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.

DEFAULT REDUCTION PLAN

Under some circumstances, a school may be required to establish and implement a plan designed to reduce defaults by its students in the future (see "Penalty for Schools With High Cohort Default Rates" above). The school must submit to the Department by December 31 of the calendar year in which the cohort default rate was calculated

- a written description of the default reduction plan or

- a statement indicating that the school agrees to comply with the following 14 required measures.

A school's default reduction plan must include the measures listed below and a description of the measures the school will take to reduce defaults. The school must explain how it plans to

1 revise admission policies and screening practices, consistent with applicable state law, to ensure that students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study;

2 improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including

   Δ providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;
   Δ publicizing the availability of the academic counseling and other support services;
   Δ establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and
   Δ maintaining records identifying those students who receive academic counseling;

3 attempt to reduce its withdrawal rate by conforming with its accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.34 and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency;

4 increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution—reviews must be conducted each month;

5 expand its job placement program for its students by

- Δ increasing contacts with local employers, counseling students in job search skills;
- Δ exploring with local employers the feasibility of establishing internship and cooperative education programs;
- Δ attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and
- Δ establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

6 remind the borrower of the importance of the repayment obligation and of the consequences of default, and update the institution's records regarding the borrower's employer and employer's address as part of the contacts with the borrower under 34 CFR 674.42(b);

7 obtain from the borrower, at the time of a borrower's admission to the institution, information regarding references and family members beyond those provided on the loan application, in order to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution;

8 explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Perkins Loan;

9 use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview;

Submitting Assignment of Defaulted Loans

Dear Colleague Letter CB-95-13, dated June 1995, correction page provided in Dear Colleague Letter CB-95-22, dated September 1995.

10 during the exit interview provided to a borrower

- Δ explain the use by institutions of outside contractors to service and collect loans;
- Δ provide general information on budgeting of living expenses and other aspects of personal financial management; and
- Δ provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms;

11 use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling;

12 conduct an annual comprehensive self-evaluation of its administration of the Student Financial Assistance (SFA) programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications;

13 delay loan disbursements to first-time borrowers for 30 days after enrollment; and

14 require first-time borrowers to endorse their loan checks at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

ASSIGNMENT

A school may assign a defaulted Perkins Loan or NDSL to the Department if

- the school has not been able to collect despite having followed due diligence procedures, including at least a first level of collection and litigation, if required by the regulations in effect on the date the loan entered default;
- 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.

A promissory note may be assigned only during the submission period the Department establishes.

A school must submit the following documents to the Department for any loan it proposes to assign:

1 an assignment form—ED Form 553, provided by the Department and completed by the school, which must include a certification by the school that it has complied with the due diligence procedures discussed in Chapter 6 of this Part, including at least a first level collection effort;

2 the original promissory note or a certified copy of the original note;

3 a copy of the repayment schedule;

4 a certified copy of any judgment order entered on the loan;

5 one photocopy of completed ED Form 553;

6 a complete statement of the repayment history;

7 copies of all approved requests for deferment and cancellation;

8 a copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan;

9 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;

10 copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable; and

11 documentation that the institution 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 percent as of June 30 of the second year preceding the submission period.

The Department will not accept assignment of a loan if

- the school has not included the borrower's Social Security Number;
- the borrower has received a discharge in bankruptcy—unless the bankruptcy court has determined that the 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;
- the school has sued the borrower unless the judgment has been entered and assigned to the United States; or
- the loan has been canceled because the borrower has died or because the borrower has filed for, or been granted, cancellation due to permanent and total disability.

A school should mail assignments to

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

If the Department 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.** After the Department has accepted the assignment of the loan, the school must endorse and forward to the Department any subsequent payment(s) the borrower may make.

If the Department later determines an assigned loan to be unenforceable because of an act or omission on the part of the school or its agent, the school will 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 school must consider a borrower whose loan has been assigned to the United States for collection to be in default on the loan for the purpose of eligibility for assistance from SFA programs until the borrower provides the school with confirmation from the Department that he or she has made satisfactory arrangements to repay the loan.

Program Funds

PART 2 Chapter 8

As discussed in SFA Handbook: Institutional Eligibility and Participation *and in Part 1 of this Reference, a school that wants to participate in any Student Financial Assistance (SFA) Program must sign a Program Participation Agreement with the Secretary. The agreement must be signed by the school official legally authorized to assume, on the school's behalf, the agreement's obligations.*

For all of the SFA Programs, the agreement provides that the school must use the funds it receives solely for the purposes specified in the regulations for each program and requires the school to administer each program in accordance with the Higher Education Act of 1965 (HEA), as amended, and the Student Assistance General Provisions regulations. The agreement also requires the school to submit annually to the U.S. Department of Education a report containing information that will enable the Department to determine the school's cohort default rate (discussed in Chapter 7 of this Part).

As discussed in the Introduction to this Part, the agreement for the Federal Perkins Loan Program also requires the school to establish and maintain a Perkins Loan fund (the fund) and to deposit into the fund—

- the federal capital contribution (FCC) the school receives as its federal allocation for the program for each award year (see below);
- the school's matching share—the institution's capital contribution (ICC), discussed on the next page;
- payments the school receives for repayment of loan principal, interest, collection charges, and penalty or late charges on loans from the fund;
- payments the school receives from the federal government for cancellations of Perkins Loans and National Direct Student Loans (NDSLs) (see Chapter 5 of this Part);
- any other earnings on fund assets, including net interest earnings on funds deposited in an interest-bearing account (total interest minus bank charges incurred on the account); and
- proceeds of any short-term no-interest loans the school makes to the fund in anticipation of receipt of its FCC or of loan collections.

Cash Management
34 CFR 668.163

Cash Management Requirements Specific to Perkins
34 CFR 674.19

A school applies for program funds annually through the electronic *Fiscal Operations Report and Application to Participate* (FISAP). The Department allocates funds directly to schools. The allocation (FCC) for the Perkins Loan Program is the amount of funding the school is authorized to receive from the Department for an award year. This amount is based on the funds appropriated by Congress for the program, as well as the allocation formulas, which were established by law and which do not provide for appeals.

FISCAL PROCEDURES

Requirements for maintaining and accounting for SFA program funds are included in 34 CFR 668.163. The cash management requirements that apply in general to SFA programs (those in the General Provisions) are discussed in *SFA Handbook: Institutional Eligibility and Participation*. The cash management requirements specific to the campus-based programs (those in the Federal Work-Study [FWS], Federal Supplemental Educational Opportunity Grant [FSEOG], and Perkins Loan regulations) are discussed in Part 1, Chapter 3 of this Reference. The cash management provisions that apply specifically to the Perkins Loan Program follow.

- Under the provisions of 34 CFR 668.163(c), a school must maintain the Perkins Loan Program Fund in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States; interest or income earned on fund proceeds are retained by the school as part of the Perkins Loan Fund.

- If a school credits a student's account at the school with Perkins Loan funds, the school must notify the student of the date and amount of the disbursement, the student's right to cancel all or a portion of that loan and his or her right to have the funds returned to the school's Perkins fund.

- The school must send the above notice, either in writing or electronically, within 30 days of the date the school credits the student's account at the school. If the school sends the notice electronically, the school must require the student to confirm receipt of the notice, and must keep a copy of the confirmation.

- The school must return the Perkins Loan proceeds, cancel the loan, or do both

    - Δ if the school receives a loan cancellation request within 14 days after the school sends the notice to the student, or,
    - Δ if the school sends the notice more than 14 days before the first day of the payment period and the school receives a cancellation request by the first day of the payment period.

Recordkeeping
34 CFR 668.19 and 34 CFR 668.24

- If the school does not receive the cancellation request within the time period described above, the school may return the loan proceeds, cancel the loan, or do both, but is not required to do so. The school must notify the student in writing or electronically of the school's decision. Additional notification requirements that apply to the disbursement of all SFA program funds are discussed in detail in *SFA Handbook: Institutional Eligibility and Participation*.

- A school must establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse Perkins Loan funds to students.

- A separate bank account for federal funds is not required, unless the school fails to comply with the requirements in the cash management regulations and program participation standards discussed in *SFA Handbook: Institutional Eligibility and Participation*.

- A school must notify any bank that federal funds are deposited in an account by ensuring that the name of the account clearly shows that federal funds are deposited in the account or notify the bank in writing of the name of the account and keep a copy of this notice in its files.

- The school must maintain sufficient liquidity in the Perkins Loan Fund to make required disbursements to students.

- A school must deposit its ICC into its fund prior to or at the same time it deposits any FCC

- A school must establish and maintain program and fiscal records that are reconciled at least monthly.

- Each year a school must submit a Fiscal Operations Report plus other information the Department requires; the school must ensure that the information reported is accurate and must submit it on the form and at the time the Department specifies.

RECORDKEEPING REQUIREMENTS

A school must follow the recordkeeping requirements in the General Provisions (discussed in *SFA Handbook: Institutional Eligibility and Participation*), those specific to the campus-based programs, and those specific to the Perkins Loan Program. Perkins Loan records a school must maintain include but are not limited to

- the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine a student's eligibility for a Perkins Loan;

Records Readily Available For Review
34 CFR 668.24(d)

- the student's application data and data submitted to the Department or the school on behalf of the student;
- documentation of each student's eligibility for a Perkins Loan;
- documentation of the amount of a Perkins Loan, its payment period, and the calculations used to determine the amount of the loan;
- documentation of the date and amount of each disbursement of Perkins Loan funds;
- documentation of the school's calculation of any refunds or overpayments due to or on behalf of the student and the amount, date, and basis of the school's calculation;
- documentation of the payment of any refund or overpayment to the SFA program fund or the Department;
- information collected at initial and exit loan counseling required by Perkins Loan regulations; and
- reports and forms used by the school in its participation in a campus-based program, and any records needed to verify data that appear in those reports and forms.

In addition to following the recordkeeping requirements mentioned in *SFA Handbook: Institutional Eligibility and Participation* and Part 1 of this Reference, a school must follow the procedures in 34 CFR 674.19 for documentation of a student's Perkins Loan repayment history. The school must maintain a repayment history for each borrower that shows

- the date and amount of each repayment during the life of the loan;
- the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges;
- the date, nature, and result of each contact with the borrower (or endorser for loans made prior to July 23, 1992) in the collection of an overdue loan; and
- copies of all correspondence to or from the borrower (and endorser for loans made prior to July 23, 1992), except for bills, routine overdue notices, and routine form letters (demand letters, notices of intent to accelerate, and the like are not considered to be routine form letters).

A school must make its records readily available for review by the Department or its authorized representative at an institutional location the Department or its representative designates. Generally, a school

must keep records relating to the school's administration of a campus-based program or the Federal Pell Grant Program for three years after the end of an award year for which the aid was awarded and disbursed under those programs. There are some exceptions to this requirement:

- The school must keep the FISAP in the Perkins Loan, FSEOG, and FWS Programs, and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted.

- The school must keep repayment records for Perkins Loans, including records relating to cancellation and deferment requests for at least three years from the date a loan is assigned to the Department, canceled, or repaid.

- Records questioned in an audit or program review must be kept until the questions are resolved or until the end of the retention period applicable to the records, whichever is later.

For information on the formats in which a school must keep its campus-based program records, see Part 1 of this Reference.

Part 3

CAMPUS-BASED PROGRAMS REFERENCE:

Federal Work-Study

Part 3: Federal Work Study Program Contents

Introduction

The Federal Work-Study (FWS) Program encourages the part-time employment of undergraduate and graduate students who need the income to help pay for their cost of education, and encourages FWS recipients to participate in community service activities. Schools are required to utilize money from their FWS Program funds to compensate students employed in community service jobs. (See below.)

RECENT CHANGES

The following changes resulted from the Higher Education Amendments of 1998. Unless otherwise stated, these changes became effective October 1, 1998.

- A school is required to offer (make available) a **reasonable proportion** of its FWS allocation to independent or less-than-full-time students.

- The definition of "community services" given in the law now includes on-campus child-care services that are open and accessible to the community. This change simply adds one of the Department's long-standing policies to the law.

- The definition of "community services" given in the law now includes services to students who have disabilities and are enrolled at the school. Previously, the Department didn't consider these services community services because they weren't open and accessible to the community outside the school.

- The law now states that FWS employment may include internships, practica, or research assistantships as determined eligible by the Department. Previously, the Department has stated that FWS employment may include internships, practica, or research assistantships with certain restrictions (even if the student may receive academic credit for the work performed). This change seems to simply add one of the Department's long-standing policies to the law. At this time, whether these same restrictions will continue to apply is subject to negotiated rulemaking.

- A school participating in FWS is no longer required to make equivalent non-FWS jobs reasonably available to all students who want work.

- For up to 10 percent of a school's FWS students, the federal share of a student's compensation may exceed the current 75-percent limit. In such a case, the federal share is capped at 90 percent of the student's compensation. A school can take advantage of this higher federal share only in cases where the student is employed at a nonprofit or public organization that

  - is unable to pay the regular non-federal share and
  - has no ownership, operation, or control relationship with the school.

- Jobs in private for-profit companies must be academically relevant only to the maximum extent possible. Previously, jobs in such companies always had to be academically relevant to the student's course of study.

- On a student's request, a school may make payments directly to the student's bank account or may credit the student's school account for tuition and fees, room and board, and other institutionally provided goods and services.

- A Work-College may use available funds to coordinate and carry out joint projects to promote work-service learning and to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes.

- Beginning with the 1999-2000 award year, a student may be paid for a reasonable amount of time for travel or training that is directly related to a community service job.

- Starting with the 2000-2001 award year, the allocation formula changes. Under the new formula,

  - the base is equal to the total of the base guarantee plus the pro rata share received for the 1999-2000 award year,
  - the pro rata share is eliminated, and
  - the fair share calculation is based on all the excess funds after the base guarantees are met.

- Beginning with the 2000-2001 award year, the Department must reallocate returned FWS funds to a school that used at least 5 percent of its total FWS allocation to pay students employed as reading tutors or in family literacy activities. Previously, the Department was required to reallocate funds to a school that used at least 10 percent of its FWS allocation for students employed in community services.

- Starting with the 2000-2001 award year, a school must spend at least 7 percent of its allocation on community service jobs. Until that award year, the minimum a school must spend on community service remains 5 percent.

- Starting with the 2000-2001 award year, to meet the community service requirement, a school must use FWS funds to pay students employed in at least one

  - Δ family literacy project
  - Δ reading tutoring program for children who are preschool age or in elementary school.

- The law now states that starting with the 2000-2001 award year, the federal share of compensation paid students employed as reading tutors or in family literacy activities may exceed 75 percent. This change simply adds one of the Department's existing regulations (34 CFR 675.26(d)) to the law.

Purpose of Work-Colleges Program
34 CFR 675.43

Definition of Work-College
34 CFR 675.41

WORK-COLLEGES PROGRAM

The Higher Education Amendments of 1992 authorized the Work-Colleges Program. Schools that satisfy the definition of "work-college" may apply with the U.S. Department of Education to participate in the program. A work-college may transfer funds from its allocation for the FWS Program and/or Federal Perkins Loan Program to fund the school's Work-Colleges Program.

The Work-Colleges Program recognizes, encourages, and promotes the use of comprehensive work-learning programs as a valuable educational approach when used as an integral part of the school's educational program and as a part of a financial plan that decreases reliance on grants and loans. The program also encourages students to participate in community service activities.

The term "work-college" is defined as an eligible institution[1] that

- is a public or private nonprofit school with a commitment to community service;
- has operated a **comprehensive work-learning program** for at least two years;
- provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole;
- requires all students who reside on campus to participate in a comprehensive work-learning program; and
- requires providing services as an integral part of the school's educational program and as part of the school's educational philosophy.

1. See *SFA Handbook: Institutional Eligibility and Participation* for the definition of an eligible institution.

A "comprehensive student work-learning program" is defined as a student work/service program that

- is an integral and stated part of the institution's educational philosophy and program;
- requires participation of all resident students for enrollment, participation, and graduation;
- includes learning objectives, evaluation, and a record of work performance as part of the student's college record;
- provides programmatic leadership by college personnel at levels comparable to traditional academic programs;
- recognizes the educational role of work-learning supervisors; and
- includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

A Work-College may use available funds to coordinate and carry out joint projects to promote work-service learning and to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes.

Additional requirements for the Work-Colleges Program are found in 34 CFR 675, Subpart C.

Selecting Recipients & Assigning Jobs

GENERAL STUDENT ELIGIBILITY REQUIREMENTS

To be eligible for a Federal Work-Study (FWS) job, a student must meet all eligibility requirements listed in *SFA Handbook: Student Eligibility.* In addition, a student must have financial need; that is, his or her cost of attendance (COA) must be greater than his or her Expected Family Contribution (EFC). A financial aid administrator may not award FWS employment to a student if that award, when combined with all other resources, would exceed the student's need. (See Chapter 2 of this Part.) However, unlike the other two campus-based programs, the FWS Program does not require that priority be given to students who have **exceptional** financial need. In choosing students for FWS employment, schools must follow the selection procedures discussed in Part 1, Chapter 1 of this Reference.

Both undergraduate and graduate students are eligible to apply for employment under the FWS Program. A student who has earned a bachelor's or first professional degree is also eligible to receive an FWS job to pursue an **additional undergraduate** degree.

Previously, a school was required to offer at least 5 percent of its federal FWS allocation to less-than-full-time students and independent students if 1) the allocation was partly based on the financial need of these students and 2) the financial need of these students exceeded 5 percent of the total financial need of all students at the school. As a result of the Higher Education Amendments of 1998, a school is now required to offer a **reasonable proportion** of its FWS allocation to independent or less-than-full-time students (regardless of whether the two conditions of the previous requirement were met).

A school may award an FWS job to a student who is enrolled or accepted for enrollment on at least a half-time basis in an eligible teacher certification program. Criteria for an eligible teacher certification program are discussed in Part 1, Chapter 1 of this Reference.

ASSIGNING JOBS

A school must make FWS jobs reasonably available to all eligible students at the school. To the maximum extent practicable, a school must provide FWS jobs that complement and reinforce each recipient's educational program or career goals.

Previously a school was also required (to the extent funds were available) to make available "equivalent employment" (that is, similar non-FWS jobs offered or arranged by the school) to all students at the school who wanted to work. The Higher Education Amendments of 1998 removed this requirement effective October 1, 1998.

In assigning an FWS job, a school must consider the student's financial need, the number of hours per week the student can work, the period of employment, the anticipated wage rate, and the amount of other assistance available to the student. While there is no minimum or maximum award, the amount for each student should be determined based on these factors.

FWS jobs may be on campus or off campus. See Chapter 4 of this Part for more information. Off-campus jobs must be in the public interest if the work is for a federal, state, or local public agency or for a private nonprofit organization. However, a school may use part of its FWS allocation to provide jobs in private for-profit organizations. Previously, a job in a private for-profit company was required to be academically relevant to the student's course of study. The Higher Education Amendments of 1998 amended this requirement, effective October 1, 1998, so that academic relevance is required only to the maximum extent possible.

FWS employment may be used for community service programs and for programs providing supportive services to students with disabilities. (Types of employment are discussed in Chapter 4 of this Part.)

JOB DESCRIPTIONS

Each FWS position should have a job description that includes the following:

- the name and address of the student's employer (department, public agency, nonprofit organization),
- the purpose of the student's job,
- the student's duties and responsibilities,
- the job qualifications,
- the job's wage rate or range,

- the length of the student's employment (beginning and ending dates), and

- the name of the student's supervisor.

The job description has several purposes:

- It clearly defines whether the job qualifies under the FWS Program.

- It provides the information needed to explain the position to a student and to help him or her select the type of employment most closely related to his or her educational or career objectives.

- It helps the financial aid administrator, the student, and the supervisor determine the number of hours of work required at the specified wage rate to meet a student's financial need.

- It establishes a written record, for both student and employer, of the job's duties and responsibilities so that there will be no misunderstanding.

If a student is employed with an agency or organization that provides community services, the school should, as with any other FWS position, have a job description that includes the duties and the responsibilities. For example, a community food bank appears to be the type of organization that has jobs that satisfy the definition of community services; however, the institution must review the individual job descriptions and determine if certain positions at the community food bank qualify. If the FWS recipient will work as a clerk in the food bank, the duties in the job description for the position of clerk would have to meet the definition of community services in the FWS regulations before the job could be considered an FWS community service job. (See the definition in Chapter 4 of this Part.) The duties must include providing indirect or direct services designed to improve the quality of life for community residents, particularly low-income individuals, or designed to solve particular problems related to their needs. It is important to note that work performed off campus for a nonprofit agency must also be in the public interest. (See Chapter 4 of this Part.)

EMPLOYMENT CONDITIONS AND LIMITATIONS

The provisions discussed below apply to all work under FWS, whether on or off campus.

FWS employment must be governed by employment conditions, including pay, that are reasonable according to the type of work performed, the geographic region, the employee's proficiency, and any applicable federal, state, or local law.

Minimum Wage
Dear Colleague Letter CB-96-23

FWS employers must pay students at least the current federal minimum wage. The current federal minimum wage is $5.15 an hour (refer to Dear Colleague Letter CB-96-23, dated November 1996 for more information on minimum wage). The Small Business Job Protection Act of 1996 established a subminimum, or training, wage that is lower than the minimum wage. However, it is not permissible to pay the subminimum wage rate to students in FWS jobs.

Displacing Regular Workers Prohibited
34 CFR 675.20

FWS employment must not displace employees (including those on strike) or impair existing service contracts. Also, if the school has an employment agreement with an organization in the private sector, the organization's employees must not be replaced with FWS students. Replacement is interpreted as displacement.

Employment In Building Used For Religious Purposes
34 CFR 675.20

FWS positions must not involve constructing, operating, or maintaining any part of a building used for religious worship or sectarian instruction. In determining whether any FWS employment will violate this restriction, a school should consider the purpose of the part of the facility in which the work will take place and the nature of the work to be performed. If the part of the facility in which the student will work is used for religious worship or sectarian instruction, the work cannot involve construction, operation, or maintenance responsibilities. If that part of the facility is not being used for religious worship or sectarian instruction, the school should make sure that any work the student will perform meets general employment conditions and that other limitations are not violated.

Fees or Commissions Prohibited
34 CFR 675.27

Neither a school nor an outside employer that has an agreement with the school to hire FWS students may solicit, accept, or permit soliciting any fee, commission, contribution, or gift as a condition for a student's FWS employment. However, a student may pay union dues to an employer if they are a condition of employment and if the employer's non-FWS employees must also pay dues.

Example of an Internship That Normally Doesn't Qualify as an FWS Job
Bernadette is employed as a student teacher at Stubbs College. Because the school doesn't normally pay persons in such positions, the internship doesn't qualify as an FWS job.

The Fair Labor Standards Act of 1938, as amended, prohibits employers (including schools) from accepting voluntary services from any paid employee. Any student employed under FWS must be paid for all hours worked.

The fact that a student may receive academic credit for the work performed does not disqualify the job under FWS. However, there are certain restrictions. For a student who must complete an internship or practicum as part of his or her degree requirement, the internship or practicum does not qualify under FWS unless the employer normally pays all other persons who hold the same position or has paid all other persons who have held the same position in the past. The treatment of an internship or practicum described here has been ED's long-standing policy. The Higher Education Amendments of 1998 clarify that FWS employment may include internships, practica, or research assistantships as ED determines. At this time, whether these same restrictions will continue to apply is subject to negotiated rulemaking.

A student who receives academic credit for an FWS job should not be paid any less than he or she would be paid if no academic credit were received. A student may not be paid for receiving instruction in a classroom, laboratory, or other academic setting.

A student's FWS wages may be garnished only to pay any costs of attendance that the student owes the school or that will become due and payable during the period of the award. Schools must oppose any garnishment order they receive for any other type of debt; paying FWS funds in such cases would not be in compliance with the Student Financial Assistance (SFA) requirement that funds be used solely for educational purposes. As schools may not necessarily be the employers in an off-campus employment arrangement, they must adopt effective procedures to notify off-campus employers that garnishment of FWS wages for any debt other than a cost of attendance is not permissible.

Calculating FWS Awards

A student must have financial need to be eligible for a Federal Work-Study (FWS) job; that is, the student's cost of attendance (COA) must be more than the amount of his or her Expected Family Contribution (EFC) as calculated by the Federal Need Analysis Methodology. Procedures for determining a student's COA and eligibility for aid from Student Financial Assistance (SFA) Programs are discussed in SFA Handbook: Student Eligibility.

DETERMINING MAXIMUM FWS ELIGIBILITY

A financial aid administrator may not award FWS employment to a student if that award, when combined with all other resources, would exceed the student's need. Resources, as defined in the campus-based regulations, are listed in Part 1, Chapter 2. In determining the maximum FWS award a student is eligible to receive, the aid administrator must take into account the following resources:

- those resources the aid administrator can reasonably anticipate at the time aid is awarded to the student,
- those the school makes available to its students, or
- those the aid administrator knows about.

The sum of a student's FWS award plus other resources may not exceed his or her financial need.

Non-need-based earnings, such as earnings from a job a student locates on his or her own with a private employer, are not considered to be a resource for the current award year because they will be reported on the *Free Application for Federal Student Aid* (FAFSA) for the subsequent award year and will be used to determine the EFC for the subsequent award year. Only net income from **need-based** employment is considered as a resource. Examples of need-based employment would be employment under the U.S. Department of Veterans Affairs' work-study program and employment with a state if that employment is based on the student's need for assistance to pay for educational expenses.

The school monitors each student's net income from need-based sources to determine whether the student's need has been met. The school does so by examining the school's payroll records of disbursements to the student under the FWS Program and any other need-based employment program. The school's FWS fiscal records must be reconciled at least monthly.

Financial Need Calculation

COA
\- *EFC*
= *Financial need*

Maximum FWS Award Calculation

Financial need
\- *Other resources*
= *Maximum FWS award*

Treatment of taxes and job-related costs
34 CFR 675.25

Working during a period of nonattendance
34 CFR 675.25

Gross FWS Earnings Calculation Example
Chris is eligible for a net FWS award of $1,000 at Peterson University. Because Chris has a Social Security tax of 7.65% and $100 in job-related expenses, he may earn up to $1,191.12 in gross earnings. This is calculated by adding the need-based award ($1,000) and the job-related expenses ($100) for a total FWS award of $1,100. Peterson's financial aid administrator then must be sure that Chris's earnings cover the Social Security tax that will be withheld. Chris's gross earnings are 100% of what he is allowed to earn. His net earnings are 92.35% of his gross earnings (100%-7.65% for Social Security tax). The administrator must divide the total FWS award ($1,100) by the percentage the net earnings are of the gross earnings (92.35%), allowing Chris total earnings of $1,191.12. Only the need-based earnings of $1,000 are available to count toward Chris's need for federal student aid and to help pay his COA at Peterson.

Resources Definition
34 CFR 673.5

EARNINGS APPLIED TO COST OF ATTENDANCE

Not all of a student's FWS earnings are available to the student for educational expenses. Some of the student's expenses may be job related. Therefore, to determine the net amount of a student's FWS earnings that will be available to help pay his or her COA, the school must subtract estimated taxes and job-related costs from the student's gross FWS earnings. Examples of job-related costs include uniforms, the cost of meals at work, and transportation to and from work. During vacation periods, room and board may also be considered job-related costs if the student is paying them **only** because he or she has an FWS job.

Federal and state income taxes paid may also be withheld from a student's wages. In some cases, these should also be deducted from the student's gross income to calculate the net amount available to the student; however, if the aid administrator is certain that the student's federal taxes paid will be refunded by the Internal Revenue Service (IRS), the school should not subtract these amounts from the gross wages when calculating the net wages available to the student for the FWS award. Similarly, if the aid administrator is certain that the student's state taxes withheld will be refunded by the state, the school should not subtract these amounts from the gross wages when calculating the net wages available to the student for the FWS award. Only taxes the student will actually pay (those that will be withheld and **not** refunded) should be subtracted.

If the student works during a vacation or other period when he or she is not attending classes, his or her net FWS earnings (earnings minus taxes and job-related expenses) from that period must be counted toward payment of the student's COA for the **next** enrollment period (refer to Chapter 4 of this Part).

A school is encouraged to tell each FWS recipient how much of his or her earnings it estimates to be counted toward payment of his or her COA. Of course, at the end of a student's employment, the school will need to review the estimate to see if it was accurate and to make adjustments if it was not.

FWS OVERAWARDS AND RESOURCES

Regulatory provisions regarding overawards and resources are in 34 CFR 673.5. A list of resources and a detailed discussion of the treatment of overawards in the campus-based programs, including FWS, is included in Part 1, Chapter 2 of this Reference, "Resources and Overawards."

Paying Students

PART 3 Chapter 3

For information about determining the federal share and institutional share of Federal Work-Study (FWS) payments to students, refer to Chapter 5 of this Part.

ESTABLISHING WAGE RATES

Minimum Wage
CB-96-23, dated November 1996

Undergraduate students are paid FWS wages on an hourly basis only. Graduate students may be paid by the hour or may be paid a salary. Regardless of who employs the student, the **school** is responsible for making sure the student is paid for work performed.

A school should determine the number of hours a student is allowed to work based on the student's financial need and on how the combination of work and study hours will affect the student's health and academic progress. There are no statutory or regulatory limits on the number of hours per week or per payment period a student may work, provided no overaward occurs. (See Chapter 2 of this Part.)

A student must be paid at least the current federal minimum wage of $5.15 per hour, but there is no maximum wage rate. As noted in Chapter 1 of this Part, it is not permissible to pay a lower "subminimum" or "training" wage to students in FWS jobs. A school may not count fringe benefits as part of the wage rate and may not pay a student commissions or fees. In determining an appropriate rate, the school must consider the following:

- the skills needed to perform the job,
- how much persons with those skills are paid in the local area for doing the same type of job,
- rates the school would normally pay similar non-FWS employees, and
- any applicable federal, state, or local laws that require a specific wage rate.

A student's need places a limit on the total FWS earnings permissible but has no bearing on his or her wage rate. It is not acceptable to base the wage rate on need or on any other factor not related to the student's skills or job description. If a student's skill level

depends on his or her academic advancement, the school may pay a student on that basis. For example, a junior or third-year lab student may be paid a higher rate than a sophomore or second-year lab student. However, in most cases, students performing jobs comparable to those of other employees should be paid comparable wages, whether the other employees are students at different class levels or are regular employees.

DISBURSEMENT

A school must pay a student at least once a month. Formerly, a school was required to pay the federal share of FWS compensation by check or similar method[1] that the student could cash on his or her own endorsement. The school could not directly transfer the federal share to a student's account at the school. Effective October 1, 1998, a school may, on a student's request, make payments directly to the student's bank account or may credit the student's school account for tuition and fees, room and board, and other institutionally provided goods and services.

A school may not obtain a student's power of attorney to authorize any disbursement of funds unless the U.S. Department of Education has granted prior approval. The Department would not grant such a power of attorney (to allow a school to act on behalf of a student) unless the school could demonstrate that there is no one else (such as a relative, landlord, or member of the clergy, for example) who could act on behalf of the student.

If the school pays its share of FWS wages by **check**, it must pay the nonfederal share to the student at the same time it pays the federal share. (See Chapter 5 of this Part for a discussion of federal and institutional shares of FWS compensation.) FWS wages are earned when the student performs the work. A school may pay the student after the last day of attendance for FWS wages earned while he or she was still in school. However, when a student has withdrawn from school, FWS funds may not be used to pay for work performed after the student withdrew. A correspondence student must submit the first completed lesson before receiving payment.

If the school pays its share of FWS wages for an award year in the form of a **noncash contribution** (tuition, fees, services, or equipment), it must do so before the final payroll period of the award year. If the school pays this share in the form of **prepaid** tuition, fees, services, or equipment, it must give the recipient—again, before the end of the final payroll period—a statement of the amount of the noncash contribution earned. (For more information on using noncash contributions as part of the school's share of FWS wages, see Chapter 5 of this Part.)

1. For example, the school may pay the student with a draft or purchase order or electronic transfer to the student's bank account.

When a payment period is in two award years (that is, when it begins before and ends after July 1), the student is ordinarily paid for compensation earned through June 30 with funds allocated for the first award year and for compensation earned beginning July 1 with funds allocated for the following award year.

Payment Period in Two Award Years Example

John's payment period extends from June 15, 1999 to July 15, 2000. Caravello College pays John with its 1998-99 allocation through June 30 (the end of the 1998-99 award year) and with its 1999-2000 allocation beginning July 1, 1999 (the beginning of the 1999-2000 award year).

A school may "carry back" funds for summer employment; that is, it may use any portion of its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 15 of the previous award year but prior to the beginning of the current award year (July 1). For example, a school is authorized to carry back any portion of its funds allocated for the 1999-2000 award year to pay FWS wages for summer employment between May 15, 1999 and June 30, 2000 (including both those dates).

Carrying Back Funds for Summer

34 CFR 675.18

A school may carry back funds for reasons other than to pay summer wages. A school is also allowed to use up to 10% of the next year's FWS initial and supplemental allocation at any time during the current award year. "Carrying forward" is also permitted. A school may carry forward up to 10% of its FWS initial and supplemental allocation for the current award year to the next award year.

If the school carries forward funds from the current award year to the following award year, the expenditures are charged to the allocation for the current award year. If the school carries back funds from the next year to the current year, the expenditures are charged to the next award year.

Paying students from the correct award year is important; schools have been held liable when students were paid from the wrong FWS authorization. For audit and program review purposes, the school must have canceled checks in its files to show that students received payment in the amount charged to the FWS Program.

The school may use any type of payroll period it chooses, provided students are paid at least monthly. It is a good idea to have the FWS payroll correspond to other, similar payrolls at the school.

PAYROLL RECORDS

Schools must follow the recordkeeping requirements in 34 CFR 668.24 (discussed in *SFA Handbook: Institutional Eligibility and Participation*) and those in 34 CFR 675.19 (discussed below).

Payment Records

34 CFR 675.19

For reporting and control purposes, FWS expenditures must be distinguishable from other institutional expenditures. FWS compensation should either be entered on a separate voucher or, if listed on the general payroll voucher, should be grouped separately from other expenditures. If payrolls are handled on automatic data processing equipment, a special code for FWS payments should be used.

A school must establish and maintain program and fiscal records that are reconciled at least monthly. The records must include

- a certification that each student has worked and earned the amount being paid; the certification must be signed by the student's supervisor—an official of the school or off-campus agency; if the students are paid on an hourly basis, the certification must include or be supported by a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;
- a payroll voucher containing sufficient information to support all payroll disbursements;
- a noncash contribution record to document any payment of the school's share of the student's earnings in the form of services and equipment.

Payroll vouchers must support all payroll disbursements and should provide space for the following information:

- the school's name and address;
- the starting and ending dates of the payroll period;
- the student's name;
- an identification of the student's job;
- the number of hours worked during the pay period;
- the hourly rate of pay for an undergraduate student;
- the hourly rate of pay or salary for a graduate student;
- the student's gross earnings;
- any compensation withheld for federal, state, county, or city taxes, and other deductions;
- any noncash payments;
- the student's net earnings;
- a check number, duplicate receipt, or other payment identification; and
- any overtime earnings (a student may be paid overtime with FWS funds).

Recordkeeping requirements as they apply in general to all SFA programs are discussed in *SFA Handbook: Institutional Eligibility and Participation*. For information on how these requirements apply specifically to the campus-based programs, see Part 1, Chapter 3 of this Reference.

Types of Employment

PART 3 Chapter 4

Federal Work-Study (FWS) jobs may be on or off campus. Off-campus jobs must be in the public interest if the work is for a federal, state, or local public agency, or for a private nonprofit organization. However, a school may use part of its FWS allocation to provide jobs in private, for-profit organizations. Effective October 1, 1998, FWS jobs in private for-profit companies must be academically relevant to the maximum extent possible. Previously, jobs in such companies always had to be academically relevant to the student's course of study.

COMMUNITY SERVICE JOBS

Community Service
Dear Colleague Letter CB-94-4, dated March 1994 and Dear Colleague Letter CB-97-12, dated July 1997

Schools are required to make students aware of community service opportunities by encouraging them to get involved in community service activities. Schools are also required to utilize money from their FWS Program for that purpose. There is no restriction as to whether these jobs must be on or off campus. A university or college is not considered a community for the purposes of the FWS Program community service requirements. Also, private, for-profit organizations do not qualify as employers for community service under the FWS Program.

In determining whether the service is a community service, the school must always consider whether the service provided by the FWS student primarily benefits the community as opposed to the agency or school.

A school must use at least 5 percent of its FWS allocation to employ students in community service jobs unless the U.S. Department of Education grants the school a waiver. The Department will approve a waiver only if the school requests one in writing and if the Department determines that the school has demonstrated that enforcing the requirement would cause hardship for students at the school. Beginning with the 2000-2001 award year, this requirement increases to 7 percent of the school's FWS allocation.

According to the participation agreement (discussed in the Introduction to Part 1 of this Reference) between a school and the Department, a school must

- allow employment under FWS to be used to assist programs providing supportive services to students with disabilities;
- inform all eligible students of the opportunity to perform community services; and
- consult with local nonprofit, governmental, and community-based organizations to identify community service opportunities.

Community services are defined as services that are identified by an institution of higher education through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include

- such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

- work in service opportunities or youth corps as defined in Section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in Section 124(a) of that act;[1]

- support for students with disabilities; and

- activities in which an FWS student serves as a mentor for such purposes as

    Δ tutoring (discussed on pages 3-20 to 3-23),
    Δ supporting educational and recreational activities, and
    Δ counseling, including career counseling.

To be considered employed in a community service job for FWS purposes, an FWS student does not have to provide a "direct" service. The student must provide services that are designed to improve the quality of life for community residents or to solve particular problems related to those residents' needs. A school may use its discretion to determine what jobs provide indirect or direct service to the community.

The Department does not intend to indicate that certain activities are more important than others or that only jobs that have direct contact with community members are acceptable. For example, an FWS student working for a "meals on wheels" program may prepare meals for the program without having any direct contact with the community residents, yet the service he or she is providing is very important in meeting community needs.

In contacting potential community service agencies, schools should place a priority on jobs that will meet the human, educational, environmental, and public safety needs of low-income individuals. The Department has determined that at this time there is no need to burden schools with a formal definition of low-income individual for purposes of providing community service under the FWS Program. There is no statutory requirement that a particular number or

1. At the end of this section are definitions of the terms "service opportunity" and "youth corps program" (as defined in Section 101 of the National and Community Service Act of 1990) and a list of agencies, institutions, and activities included in Section 124(a) of that act.

proportion of the individuals must be low-income persons. Some examples of jobs that provide services to persons in the community who may **not** necessarily be low-income individuals are jobs that provide supportive services to students with disabilities or that prevent or control crime.

On-campus jobs can meet the definition of community services, provided that the services are open and accessible to the community and that they meet the regulatory and statutory provisions pertaining to the applicable FWS Program employment limitations and conditions. For example, it would be acceptable for an institution to set up services on the campus (e.g., tutoring centers or daycare centers) that are open to the community. If the institution sets up sites in the community and opens the services for the community, jobs at these sites would be acceptable. A service is considered open to the community if the service is publicized to the community and members of the community use the service.

Effective October 1, 1998, the definition of "community services" now includes services to students who have disabilities and are enrolled at the school. Previously, the Department didn't consider these services community services because they weren't open and accessible to the community outside the school.

Beginning with the 1999-2000 award year, a student may be paid for a reasonable amount of time for travel or training that is directly related to a community service job.

Starting with the 2000-2001 award year, to meet the community service requirement, a school must use FWS funds to pay students employed in at least one

- family literacy project or
- reading tutoring program for children who are preschool age or in elementary school.

ESTABLISHING FWS COMMUNITY SERVICE JOBS

When developing FWS community service jobs, a school might begin by

- determining which types of jobs meet the community services definition,
- determining if any of its current on-campus jobs meet the community services definition,
- determining if any of its current jobs with off-campus agencies meet the community services definition, and
- locating other potential employers.

America Reads Challenge
Dear Colleague Letter CB-97-12, dated July 1997

To place FWS recipients in community service jobs, a school might begin by

- determining which FWS recipients would be interested in community service jobs (evaluating the FWS recipients by looking at their degree or certificate programs, interests, and skills) and
- determining the number of community service jobs it needs to locate.

To promote FWS community service jobs through public relations activities, a school might begin by

- devising a plan to market community services under the FWS Program to eligible student employers and the community,
- obtaining a listing of potential community service agencies,
- asking to be a presenter at various organizations' meetings,
- engaging in networking activities,
- holding and attending job fairs,
- hosting a financial aid office "open house," and
- visiting local agencies.

A school may also get help in developing FWS community service jobs through communication with colleagues at their own school, at other schools, or with other organizations. For example the school may

- communicate to the student placement office the community-service requirements under the FWS Program;
- talk to colleagues at institutions that participated in the expired Community Service Learning Program to get ideas on implementing, locating, and developing the community service jobs; and
- contact local nonprofit, governmental, and community-based organizations to assess their needs and determine what interest exists for employing FWS students.

AMERICA READS CHALLENGE

Schools are encouraged to place FWS students as reading tutors of preschool-age children and children in elementary school as part of the school's effort to support the America Reads Challenge. This is an important way for schools to meet the community service expenditure requirement under the FWS Program, serve the needs of the

community, and give the FWS students a rewarding and enriching experience. Tutoring does not have to be held in a school setting. It could, for example, take place at a public library or community center. The programs that provide this reading tutoring for children may take place during the children's school hours or after school, on weekends, or in the summer. The school may construct its own reading tutor program or become involved with existing community programs.

The Department will authorize a 100 percent federal share of the student's FWS wages if he or she is employed as a reading tutor of preschool-age children and children in elementary school and if the work performed by the student is for the school itself, for a federal, state, or local public agency, or for a private nonprofit organization. (The federal share of FWS wages is discussed in Chapter 5 of this Part.) Tutoring may be one-on-one or in a group. Because the Department wants to provide schools with flexibility in determining the job description and duties of a reading tutor, we are not defining "reading tutor" for the FWS Program. An FWS student employed to read to a group of preschoolers in a public library, for example, would meet this requirement.

An FWS student employed as a reading tutor does not have to meet certain statutory or regulatory educational standards or qualifications for the school to receive an institutional-share waiver. However, an FWS reading tutor must have adequate reading skill, and the Department strongly recommends that the tutors be well trained before they tutor. When an FWS student receives training from a reading specialist or expert for sufficient duration and intensity, he or she is more likely to be successful with the child he or she is tutoring. Tutor training should emphasize the importance of the reading tutor's communicating with the regular classroom teacher to maximize effectiveness. Note that because the needs vary from child to child, the amount and type of training for reading tutors will often vary, depending on the child who is being tutored.

A preschool-age child is a child from infancy to the age at which his or her state provides elementary education. The definition of an elementary school varies from state to state. Because the Department does not wish to interfere with a state's determination of what constitutes children who are in elementary school, we will not provide guidance on the maximum grade level for elementary school for purposes of the institutional-share waiver for tutoring.

An FWS student can tutor a child in a parochial school under certain conditions:

- The parochial school must be classified as a private, nonprofit school by the Internal Revenue Service (IRS) or a state taxing body

- The work may not involve constructing, operating, or maintaining any part of a building used for religious worship or sectarian instruction.

- The FWS reading tutor may not use religious material to tutor the child.

The Department does not require background checks of FWS reading tutors. However, some state and local jurisdictions may require such checks. The requirements will vary according to the agency or organization involved.

The Job Location and Development (JLD) Program may be used to locate or develop jobs for FWS students as reading tutors of children. However, using JLD funds to find jobs only for FWS students would not satisfy the JLD statutory requirement to expand off-campus jobs for currently enrolled students who want jobs regardless of their financial need.

An FWS reading tutor job might qualify for a waiver of the FWS institutional-share requirement but not qualify as part of the 5 percent community service requirement. If, for example, a postsecondary school employs FWS students to tutor young children in its daycare center and the only children in the center are those of the school's students, staff, and faculty, the job would qualify for the waiver, but because the daycare center would benefit only the school as opposed to the community, the job would not qualify as part of the 5 percent community service requirement.

A school is not required to ask the Department for a waiver of the FWS institutional-share requirement to receive the 100 percent federal share authorization for FWS students employed as reading tutors. Instead, the school should use 100 percent federal dollars to pay such a student and then show on its *Fiscal Operations Report and Application to Participate* (FISAP) that it did so. There is no limit on the amount of funds a school can spend from its FWS allocation to pay FWS reading tutors. The Department plans to revise the FISAP to collect data on the number of FWS students employed as reading tutors of children, total earned compensation paid to these students, and the federal dollars spent for the compensation.

Training Tutors

Under limited circumstances, an FWS tutor can receive FWS wages while he or she is being trained, and these wages can qualify for an institutional-share waiver. This training period must be only for a reasonable and limited length of time. The Department would not consider a training period of an academic term to be reasonable. The Department would consider a reasonable training period to be one that occurs before the student begins tutoring and that does not exceed approximately 20 hours. A school may not pay an FWS student to take an academic course the school developed to provide classroom training on tutoring children to read. An FWS student may take such a course as long as he or she is not paid for taking the course.

The wages of an FWS student who is training reading tutors or who is performing administrative tasks related to supporting other people who are actually providing the reading tutoring do not qualify for a

federal share of up to 100 percent; rather, an institutional share is required. A school may use a portion of its administrative cost allowance (ACA) to cover the costs of training an FWS reading tutor. A school may also use a portion of its ACA to cover expenses that are related to employing a student as a reading tutor with a local school district and that the school may not incur with another organization. If, for example, a school district requires all employees to undergo a background check and be fingerprinted at a cost of $40 per employee, the postsecondary school may use a portion of its ACA to cover this cost. The FWS Program does not provide for any additional funds beyond the ACA for technical assistance and training of reading tutors. See Chapter 5 of this Part for a discussion of the ACA.

Time Spent on Activities Other Than Tutoring

The preparation time and evaluation time worked by an FWS reading tutor qualify for an institutional-share waiver as long as the time spent for this purpose is reasonable. For example, the Department would consider attending evaluation and preparation meetings once a week for approximately one hour to be reasonable. The Department wants to give some flexibility because of the value of evaluation and preparation time. However, the goal is to spend funds for FWS students to interact with the children, not for other activities.

Remember that it is the FWS reading tutor job, not the student working in the job, that qualifies for the institutional-share waiver. Thus, an FWS student who is working another FWS job in addition to the reading tutor job can be paid with 100 percent federal funds only for the time he or she is working as a tutor, not for time spent on the other job. If, for example, an FWS student spends only half of his or her time working as a reading tutor (including preparation and evaluation time) and the other half on non-tutoring tasks, the student may be paid 100 percent federal funds only for half the time and the other half must be paid with a maximum of 75 percent federal funds and a minimum of 25 percent nonfederal funds.

Documenting the Employment of FWS Reading Tutors

A postsecondary school must be able to identify the FWS students who performed tutoring. The school must also be able to provide the job description that demonstrates that these students worked as reading tutors of children, and the school must have records supporting the hours worked and the amount paid to the FWS reading tutors.

WORK ON CAMPUS

A student may be employed on campus at any type of postsecondary institution, including at a proprietary school. An FWS job at any school must, to the maximum extent practical, be related to the student's educational program or vocational goals.

A school, other than a proprietary school, may employ a student to work for the school itself, **including** certain services for which the school may contract, such as food service, cleaning, maintenance, and

security. Work for the school's contractors is acceptable as long as the contract specifies the number of students to be employed and specifies that the school selects the students and determines their pay rates. A proprietary school also may employ a student to work for the school itself with certain restrictions (discussed below under "Work for Proprietary School, On or Off Campus").

At any **private nonprofit or public school**, an FWS student may be assigned to assist a professor if the student is doing work the school would normally support under its own employment program. Having a student serve as a research assistant to a professor is appropriate, as long as the work is in line with the professor's official duties and is considered work for the school itself. However, in a **proprietary school**, a student may not assist an instructor, as instructional activities are not considered student services.

Normally, employment in a foreign country is not permissible under the law. However, a school with a branch campus in a foreign country may employ students under FWS if the branch has its own facilities, administrative staff, and faculty. Students may also be employed by a U.S. government facility such as an embassy or a military base. A student may not be employed for a nonprofit organization in a foreign country.

WORK FOR PROPRIETARY SCHOOL ON OR OFF CAMPUS

A proprietary school may employ a student to work for the school itself but only in jobs that meet certain criteria:

1 If the jobs are in community service, they may be either on or off campus. Students employed by a proprietary school and performing community service do not have to furnish student services that are directly related to their education.

2 If the jobs are **not** in community service, they must be on campus and must

- Δ provide student services,
- Δ complement the student's educational program or vocational goals to the maximum extent possible, and
- Δ not involve soliciting potential students to enroll at the proprietary school.

The regulations define student services as services that are offered to students and that are directly related to the work-study student's training or education. For example, jobs that provide student services may include, but are not limited to, jobs in a financial aid office or library, peer guidance counseling, and jobs providing social and health services or tutorial services. However, work in the admissions or recruitment area of a school is not acceptable, as this employment could involve soliciting potential students. Maintenance (cleaning dorms) is not acceptable. In general, work that would primarily benefit the school rather than its students is not permissible. For example, a

student may not work in the front reception area or in the business office of a school, as those jobs do not provide student services. As stated earlier, a student may not assist an instructor, as instructional activities are not considered student services.

WORK OFF CAMPUS FOR NONPROFIT OR GOVERNMENT AGENCY

If a student is employed off campus by a federal, state, or local public agency[2] or by a private nonprofit organization, providing jobs related to the student's academic or vocational goals is encouraged, but not required. However, the work performed **must be in the public interest**. Work in the public interest is defined as work performed for the welfare of the nation or community, rather than work performed for a particular interest or group.

A private nonprofit organization is one in which no part of the net earnings of the agency benefits any private shareholder or individual. An organization must be incorporated as nonprofit under federal or state law. A school classified as a tax-exempt organization by either the federal or state Internal Revenue Service meets this requirement. Examples of private nonprofit organizations generally include hospitals, daycare centers, halfway houses, crisis centers, and summer camps.

Nonprofit agencies do not qualify automatically as community service employers for purposes of the FWS Program because the work performed must meet the definition of community services in the regulations. A list of programs or activities that are recognized as appropriate work in community services under the FWS Program is included at the end of this section. In addition, work off campus for a nonprofit agency must be in the public interest.

Work is not "in the public interest" if

- it primarily benefits the members of an organization that has membership limits, such as a credit union, a fraternal or religious order, or a cooperative;
- it involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office;
- it is for an elected official unless the official is responsible for the **regular** administration of federal, state, or local government;
- it is work as a political aide for any elected official;
- a student's political support or party affiliation is taken into account in hiring him or her; or
- it involves lobbying on the federal, state, or local level.

2. Local public agencies include city or county government offices, public schools, community-owned hospitals, public libraries, and community centers.

However, in deciding whether work is in the public interest, schools must consider the nature of the work as well as that of the organization. For example, a student may be employed by a private nonprofit civic club if the student's work is for the club's community drive to aid handicapped children. If the student's work is confined to the internal interests of the club, such as a campaign for membership, the work would benefit a particular group and would not be in the public interest. As another example, a student may work for a private nonprofit membership organization, such as a golf club or swimming pool, if the general public may use the organization's facilities on the same basis as its members. If only members may use the facilities, FWS employment is not in the public interest.

Political activity, whether partisan or nonpartisan, does not qualify as work in the public interest. For example, a student is not considered to be working in the public interest if working at voting polls—even if he or she only checks off the names of those who came to vote and does not pass out flyers supporting a particular candidate. Also, a student is not considered to be working in the public interest if working to support an independent candidate. Another example of nonpartisan political activity is work for a city that is sponsoring political debates.

Working for an elected official as a political aide also does not qualify as work in the public interest. For example, a student could not represent a member of Congress on a committee. However, a student could be assigned to the staff of a standing committee of a legislative body or could work on a special committee, as long as the student would be selected on a nonpartisan basis and the work performed would be nonpartisan.

Under certain circumstances, work for an elected official responsible for the **regular administration** of federal, state, or local government may be considered to be in the public interest. "Regular administration" means the official is directly responsible for administering a particular function. Such a person would not create, abolish, or fund any programs but would run them. Working for a sheriff would be acceptable, as would working for an elected judge (because he or she has direct responsibility for the judicial system). As stated above, any **political** activity would not be acceptable—raising funds for the official's reelection, for example. An FWS position that involves lobbying at the federal, state, or local level is not work in the public interest.

FWS students are prohibited from working for the Department due to the potential appearance of conflict of interest.

WORK OFF CAMPUS FOR PRIVATE FOR-PROFIT COMPANIES

Schools also may enter into agreements with private for-profit companies to provide off-campus jobs for students; however, these jobs must be academically relevant to the student's program of study. (A student studying for a business administration degree could work in a bank handling customer transactions, for example.) Private for-profit organizations do not qualify as employers for community service under the FWS Program.

A school may use up to 25 percent of its FWS allocation and reallocation for an award year to pay the wages of FWS students employed by private for-profit organizations, but the organizations may not hire FWS employees to replace regular employees.

The federal share of FWS wages for students employed by private for-profit organizations is limited to 50 percent. The for-profit organization must contribute the remaining 50 percent, plus employer taxes (such as FICA, unemployment, and Workers' Compensation).

OFF-CAMPUS AGREEMENTS

When a school enters into a written agreement—a contract—with any off-campus agency or company that employs FWS students, the school must make sure the organization is a reliable agency with professional direction and staff and that the work to be performed is adequately supervised and consistent with the purpose of the FWS Program. (See the Appendix at the end of this chapter for a model off-campus agreement. The sample need not be followed exactly but serves as a guide.)

The agreement sets forth the FWS work conditions and establishes whether the school or the agency/company will be the employer for such purposes as hiring and firing, or paying the nonfederal share of the student's wages or the student's Social Security or Workers' Compensation benefits. The employer is generally considered to be the organization that will control the work of the FWS students—supervising them at the work site, regulating their hours of work, and generally ensuring that they perform their duties properly. However, the school is ultimately responsible for making sure that payment for work performed is properly documented and that each student's work is properly supervised.

The agreement must also state which organization—the school or off-campus employer—is liable for any on-the-job injuries to the student. The **employer is not** automatically liable. Federal FWS funds cannot be used to pay an injured student's hospital expenses.

The agreement should also define whether the agency/company will assume payroll responsibility and bill the school for the federal share of the students' wages, or whether the school will pay the students and bill the agency/company for its contribution. The school must make up any payments the agency/company does not make. It is

the school's responsibility to ensure that FWS payments are properly documented, even if the agency/company does the payroll. To fulfill that responsibility, the school must keep copies of time sheets and payroll vouchers and keep evidence that the students were actually paid (usually copies of the canceled checks or receipts signed by the students).

The school is also responsible for ensuring that each student's work is properly supervised. School officials should periodically visit each organization with which they have an off-campus agreement to determine whether students are doing appropriate work and whether the terms of the agreement are being fulfilled.

In determining whether to continue an off-campus agreement, many schools have found it helpful to require that students submit a formal evaluation of their work experience at the end of the assignment. The school may also use the evaluation to help off-campus agencies improve their work programs.

Staff members of the off-campus organization must become acquainted with a school's financial aid and student employment programs to better understand the school's educational objectives. The school is responsible for supplying this information.

FWS EMPLOYMENT DURING PERIOD OF NONATTENDANCE

A student may be employed under FWS during a period of nonattendance, such as a summer or equivalent vacation period or the full-time work period of a cooperative education program. To be eligible for this employment, a student must be planning to enroll (or to reenroll) for the next regular session. The student's earnings during this period of nonattendance (earnings minus taxes and job-related costs) must be used to pay his or her cost of attendance for the next period of enrollment.

A student whose eligibility for summer FWS employment was based on anticipated enrollment in the subsequent term may fail to register or may decide to attend another school. When a student fails to register for the subsequent term, the school that employed the student must be able to demonstrate that the student was eligible for employment and that the school had reason to believe the student intended to study at that school in the next term. At minimum, the school that employed the student must keep a written record in its files showing that the student had accepted the school's offer of admittance in the upcoming session.

A student in an eligible program of study abroad may be employed during the summer preceding the study abroad if he or she will be continuously enrolled in his or her American school while abroad and if the student's study is part of the American school's own program. In such a case, a student may be employed in a qualified position in the

United States, at the American school's branch campus in a foreign country, at a U.S. government facility abroad, or in an American company abroad.

TERMS USED IN THE DEFINITION OF COMMUNITY SERVICES

The definition of community services (see page 7-20) includes the terms "service opportunity" and "youth corps program." Section 101 of the National and Community Service Act of 1990 defines the terms as follows:

- **Service opportunity**. A program or project, including a service learning program or project, that enables students or out-of-school youth to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty.

- **Youth corps program**. A program, such as a conservation corps or youth service program, that offers full-time, productive work (to be financed through stipends) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services.

LIST OF AGENCIES, INSTITUTIONS, AND ACTIVITIES INCLUDED IN THE DEFINITION OF COMMUNITY SERVICES

The definition of "community services" includes service in agencies, institutions, and activities that are designated in Section 124(a) of the National and Community Service Act of 1990:

1 Conservation corps programs that focus on

- Δ conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreation areas;
- Δ urban and rural revitalization, historical and site preservation, and reforestation of both urban and rural areas;
- Δ fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;
- Δ road and trail maintenance and improvement;
- Δ erosion, flood, drought, and storm damage assistance and controls;
- Δ stream, lake, waterfront harbor, and port improvement;
- Δ wetlands protection and pollution control;
- Δ insect, disease, rodent, and fire prevention and control;
- Δ the improvement of abandoned railroad beds and rights-of-way;

- Δ energy conservation projects, renewable resource enhancement, and recovery of biomass;
- Δ reclamation and improvement of strip-mined land;
- Δ forestry, nursery, and cultural operations; and
- Δ making public facilities accessible to individuals with disabilities.

2 Human services corps programs that include service in

- Δ state, local, and regional governmental agencies;
- Δ nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult daycare centers, programs serving individuals with disabilities, and schools;
- Δ law enforcement agencies and penal and probation systems;
- Δ private nonprofit organizations that primarily focus on social service such as community action agencies;
- Δ activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and
- Δ any other nonpartisan civic activities and services that the commission determines to be of a substantial social benefit in meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or

3 Programs that encompass the focus and services described in both paragraphs (1) and (2).

Program Funds

PART 3 Chapter 5

The Higher Education Act of 1965, as amended, describes the allocation process in detail; the procedures are not repeated in the regulations for the Federal Work-Study (FWS) Program. FWS funds are allocated directly to schools according to the statutory formulas in section 442 of the Act. (See Part 1, Introduction.)

ALLOCATION AND REALLOCATION

All federal funds a school receives as part of its FWS allocation must be held in trust for the students who are the intended beneficiaries under the FWS Program with the exception of funds the school receives for the administrative cost allowance (ACA) and for certain activities under the Job Location and Development (JLD) Program. (See Chapter 6 of this Part.) The funds may not be used for, or serve as collateral for, any other purpose.

A school may transfer up to 25 percent of its FWS allocation, as well as 25 percent of its Federal Perkins Loan federal capital contribution (FCC) allocation, **to** the Federal Supplemental Educational Opportunity Grant (FSEOG) Program. The FSEOG regulations prohibit the transfer of funds **from** the FSEOG Program to any other program. However, a school that transfers funds from the FWS Program **to** the FSEOG Program during an award year must transfer any unexpended FWS funds **back** to the FWS Program at the end of the award year. (For more information, see pages 3-36 and 3-37.)

If a school returns more than 10 percent of its FWS allocation for an award year, the school's allocation for the second succeeding award year will be reduced by the dollar amount returned, unless the Department waives this provision. The Department may do so for a specific school if the Department finds that enforcement would be contrary to the interests of the program. The Department considers enforcement to be contrary to the interest of the program only if the school returned more than 10 percent of its allocation due to circumstances that are beyond the school's control and are not expected to recur. (See Part 1, Introduction.)

Unexpended funds returned to the Department will be reallocated to an eligible school that used at least 10 percent of its total FWS allocation to pay students employed in community service activities. A school must request the reallocated FWS funds, and the school must have a fair-share shortfall to receive these funds. A school must use all the reallocated funds and must use them only to pay students in

Reduction of Allocation Due to Returned Funds
34 CFR 673.4(d)(3)

Requesting Reallocated FWS Funds
Dear Colleague Letter CB-96-11, dated June 1996

Requesting a Community-Service Requirement Waiver

Dear Colleague Letter CB-99-7, dated May 1999

community service jobs. As a result of the Higher Education Amendments of 1998, this provision will change effective with the 2000-2001 award year. Beginning then, the Department must reallocate returned FWS funds to a school that used at least 5 percent of its total FWS allocation to pay students employed as reading tutors or in family literacy activities.

A school must use at least 5 percent of its FWS initial and supplemental allocations for an award year to pay the federal share of wages to students employed in community service jobs unless the Department approves a waiver. The school may request a waiver of the 5 percent community service requirement in writing. However, the Department will approve a waiver only if it determines that the school has demonstrated that enforcing the requirement would cause hardship for the students at the school. Starting with the 2000-2001 award year (July 1, 2000 to June 30, 2001), a school must spend at least 7 percent of its allocation on community service jobs.

To request a waiver for the 1999-2000 award year, a school must send a waiver request and any supporting information or documents to the Department by June 18, 1999. The waiver request must be signed by an appropriate school official and above the signature, the official must include this statement: "I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education." If a financial aid administrator has any questions regarding the FWS community service expenditure requirements or waiver procedures, he or she may contact the school's campus-based programs Financial Management Specialist in the Institutional Financial Management Division of the Department; a list of state specialists is included in Dear Colleague Letter CB-99-7.

FWS community service expenditures for the 1998-99 award year will be reported on the *Fiscal Operations Report and Application to Participate* (FISAP) a school receives in July 1999, as that FISAP is the one the school will use to report its 1998-99 program expenditures.

When a school receives reallocated FWS funds, the minimum amount of FWS federal funds the school must expend on community service jobs is the greater of the following two amounts:

- 5 percent of the total FWS allocation
- 100 percent of the amount of the reallocated FWS funds

If a school's FWS allocation is based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeds 5 percent of the total need of all students at the school, the school must **offer** those students at least 5 percent of its FWS allocation. (This provision is in discussed in Part 1, Chapter 1 of this Reference.)

An approved school may use part of its FWS allocation for the purpose of meeting the costs of the new Work-Colleges Program discussed in the Introduction to this Part.

Reading Tutor Federal Share
*34 CFR 675.26(d)(2) & **Federal Register** dated November 27, 1996—Part IV*

FEDERAL SHARE LIMITATION

The federal share of FWS wages paid to a student may not exceed 75 percent, with the following exceptions:

- The federal share of FWS wages to a student employed by a **private for-profit** organization may not exceed 50 percent.

- The FWS regulations authorize a 100 percent federal share of FWS wages earned by a student who is employed as a reading tutor for children who are in preschool through elementary school; the work performed by the student must be for the school itself, for a federal, state or local agency, or for a private nonprofit organization. A school is not required to ask the Department for a waiver of the FWS nonfederal share requirement to receive the 100 percent federal share authorization for an FWS student employed as a reading tutor. Instead, the school should use 100 percent federal dollars to pay such a student and then show on its FISAP that it did so. All schools are encouraged to place FWS students as reading tutors for children as an important way to meet the FWS community service expenditure requirement. A discussion of employing FWS students as reading tutors is in Chapter 4 of this Part. Beginning with the 2000-2001 award year, the law also includes the authorization of this increased federal share.

- The Department may authorize a federal share of 100 percent of FWS wages at schools designated as eligible schools under the Strengthening Institutions Program, the Strengthening Historically Black Colleges and Universities Program, or the Strengthening Historically Black Graduate Institutions Program. The school must request the increased federal share for an award year on the FISAP for that year, and the work performed by the student must be for the school itself, for a federal state or local public agency, or for a private nonprofit organization.

- Effective October 1, 1998, for up to 10 percent of a school's FWS students, the federal share of a student's compensation may exceed the current 75-percent limit. In such a case, the federal share is capped at 90 percent of the student's compensation. A school can take advantage of this higher federal share only in cases where the student is employed at a nonprofit or public organization that

  - Δ is unable to pay the regular non-federal share and
  - Δ has no ownership, operation, or control relationship with the school.

The federal share may be lower than 75 percent if the school chooses to contribute more than the minimum required nonfederal share. For example, if a school has a large demand for FWS jobs from its various departments, it may contribute more than the usual 25 percent to allow for additional employment.

The federal share may **not** be used to provide fringe benefits such as sick leave, vacation pay, or holiday pay or employer's contributions to Social Security, Workers' Compensation, retirement, or any other welfare or insurance program. These restrictions on the federal share apply even when the Department authorizes a federal share of 100 percent of FWS wages.

The federal share limitation does not affect federal agencies that want to enter an off-campus FWS job agreement. They may provide the required share of student compensation normally paid by off-campus agencies plus any other employer costs that they agree to pay.

The federal share of allowable costs in carrying out the JLD Program may not exceed 80 percent of such costs. (See Chapter 6 of this Part.)

NONFEDERAL SHARE

The nonfederal share of a student's FWS wages must be at least 25 percent each award year, except in the cases listed above, when the federal share of FWS wages paid to a student may exceed 75 percent.

If the Department grants an institutional-share waiver, the school to which the waiver is granted has the **option** of providing an institutional share and determining the amount of the share. The school, however, must provide the proper federal and institutional shares for any portion of its FWS allocation that it expends under the provisions governing student employment provided by a private for-profit organization (50 percent federal-share limitation) or for the administration of the JLD Program (80 percent federal-share limitation). The institutional-share requirement for these two categories of FWS expenditures may not be waived.

A school may use any resource available to pay its share of FWS compensation except federal funds allocated under the FWS Program. The school's share may come from its own funds, from outside funds (such as from an off-campus agency), or from both.

The school also has the option of paying its share of a student's FWS wages in the form of a noncash contribution of services or equipment—for example, tuition and fees, room and board, and books and supplies. If the school's share for the award period is paid by noncash contributions, the share must be paid before the end of the student's final payroll period.

The school must document all amounts claimed as noncash contributions. If a school has assessed a charge against a student who is employed under FWS (such as a parking fine or library fine), the school may not include forgiveness of such a charge as part of the school's noncash contribution for the student.

Any FWS employment agreement a school may have with an off-campus agency should specify what share of student compensation and what other costs the agency will pay. The agreement between the school and a for-profit organization **must** require the employer to pay the nonfederal share of student earnings. The agreement between the school and an employing agency or nonprofit organization **may** require the employer to pay

- the nonfederal share of student earnings;
- required employer costs, such as the employer's share of Social Security or Workers' Compensation; and
- the school's administrative costs not already paid from its ACA.

If a school receives more money under an employment agreement with an off-campus agency than the sum of (1) required employer costs, (2) the school's nonfederal share, and (3) any share of administrative costs the employer agreed to pay, the school must handle the excess in one of three ways:

- use it to reduce the federal share on a dollar-for-dollar basis;
- hold it in trust for off-campus employment during the next award year; or
- refund it to the off-campus employer.

Funds from programs sponsored by federal agencies (such as the National Science Foundation or the National Institutes of Health) may be used to pay the nonfederal share, as long as the programs have the authority to pay student wages. A school should contact the appropriate federal agency to see if the program in question does have this authority.

As discussed at the beginning of this section, with certain exceptions, the federal share of FWS wages cannot exceed 75 percent. If the school's noncash contribution is less than the remaining 25 percent, the school must make up the difference in cash.

CARRY FORWARD/CARRY BACK

A school may spend up to 10 percent of its current year's FWS allocation (initial and supplemental) in the **following** award year (carry forward). If the school carried forward funds to be spent in the following award year, the school must report that amount on the

Carry Back/Carry Forward Example

Carrying Forward Example
McCall Trucking School carried forward 10 percent of its FWS 1998-99 allocation to be spent in 1999-2000; therefore, the school must report this amount on the October 1999 FISAP, in Part V of the Fiscal Operations Report for 1998-99.

FISAP. Before a school may spend its current year's allocation, it must spend any funds carried forward from the previous year.

A school is also permitted to spend up to 10 percent of its current year's FWS allocation (initial and supplemental) for expenses incurred in the **previous** award year. The official allocation letter for a specific award period is the school's authority to exercise this option.

Transfer of Funds to FSEOG
34 CFR 676.18

As stated in Chapter 3 of this Part, a school is authorized to make payments to students for services performed on or after May 15 of the previous award year but prior to the beginning of the current award year (that is, for summer employment) from the current award year's allocation. This "carry-back" authority is in addition to the previous authority to carry back 10 percent of the current year's allocation for use at any time during the previous award year.

25% Maximum to FSEOG
34 CFR 676.18(c)

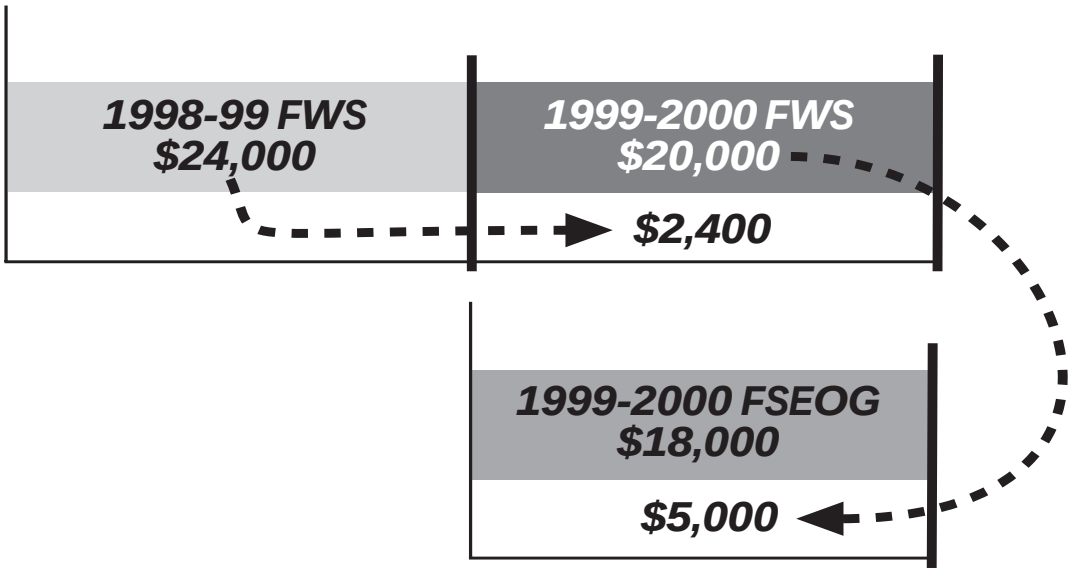
LIMITATIONS ON USE OF FUNDS CARRIED FORWARD OR BACK

Schools are not permitted to add funds that are carried forward or back to the total FWS allocation for an award year when determining the maximum percentage of available funds that may be used in that award year for any of the purposes listed below:

- the transferring of FWS funds to FSEOG,
- providing the federal share of wages in private for-profit sector jobs, or
- the JLD Program.

For example, for the 1999-2000 award year, a school may not add to the 1999-2000 total FWS allocation any FWS funds carried forward into 1999-2000 from 1998-99 or carried back into 1999-2000 from 2000-2001 when determining the maximum percentage of available funds that may be used in 1999-2000 for the purposes listed above. The maximum amount usable for each of the three purposes listed in the previous paragraph is the appropriate percentage of a school's total 1999-2000 original FWS allocation plus any supplemental 1999-2000 FWS allocation.

Transferring FWS Funds to FSEOG Example



TRANSFER OF FUNDS TO THE FSEOG PROGRAM

A school may transfer up to 25 percent of its total FWS allocation (initial and supplemental) to the FSEOG Program. The Department's permission is not required. Note that this total FWS allocation for an award year does not include FWS funds carried forward or carried back into the award year from other award years (see the chart that follows). The school must report any transfer of FWS funds to FSEOG as an expenditure on its FWS *Fiscal Operations Report*. However, a school that transfers funds to the FSEOG Program from the FWS Program during an award year must transfer any unexpended FWS funds **back** to the FWS Program at the end of the award year.

ADMINISTRATIVE COST ALLOWANCE (ACA)

As discussed in Part 1, Chapter 3, a school participating in the FWS Program is entitled to an ACA if it provides FWS employment to its student in that award year. The allowance may be used to help offset administrative costs such as salaries, furniture, travel, supplies, and equipment. The formula a school uses to calculate its total ACA for the campus-based programs is in Part 1 of this Reference.

A school may use up to 10 percent of the ACA attributable to the school's FWS Program expenditures to pay administrative costs of conducting its community service program. These costs may include the costs of

- developing mechanisms to ensure the academic quality of a student's experience;
- ensuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

Paying Administrative Costs of Conducting a Community Service Program
34 CFR 673.7(f)

Recordkeeping Requirements
34 CFR 668.24 and 675.19

- collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990, in the planning, development, and administration of these programs.

FISCAL PROCEDURES AND RECORDS

The cash management requirements that apply in general to SFA programs (those in the General Provisions) are discussed in *SFA Handbook: Institutional Eligibility and Participation*. The cash management requirements specific to the campus-based programs (those in the FWS, FSEOG, and Perkins Loan regulations) are discussed in Part 1, Chapter 3 of this Reference.

A school must follow the recordkeeping requirements in the General Provisions and those in the FWS regulations. The recordkeeping requirements that apply in general to SFA programs (those in the General Provisions) are discussed in *SFA Handbook: Institutional Eligibility and Participation*. The recordkeeping requirements specific to the campus-based programs (those in the FWS, FSEOG, and Perkins Loan regulations) are discussed in Part 1, Chapter 3 of this Reference. Information on FWS payroll records is provided in Chapter 3 of this Part.

In addition to following the fiscal procedures and records requirements mentioned in *SFA Handbook: Institutional Eligibility and Participation,* in Part 1, Chapter 3 of this Reference, and in Chapter 3 of this Part, a school must meet the following requirements, which are included in the FWS regulations

- The school must establish and maintain an internal control system of checks and balances that insures that no office can both authorize FWS payments and disburse FWS funds to students.

- If the school uses a fiscal agent for FWS funds, that agent may perform only ministerial acts.

- Each year the school must submit a *Fiscal Operations Report* and other information the Department requires. The information must be accurate and must be provided on the form and at the time the Department specifies.

Job Location & Development

PART 3 Chapter 6

The Job Location and Development (JLD) Program expands off-campus job opportunities for students who are enrolled in eligible institutions of higher education and who want jobs ***regardless of financial need****. This means that jobs may be located and developed under the JLD Program for FWS and non-FWS eligible students. The JLD Program encourages students to participate in community service activities.*

JLD community service jobs are designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to the needs of community residents. Community services are those the school has identified by working with local nonprofit, governmental, and community-based organizations. Appropriate jobs are those in fields such as health care; child care; literacy training; education (including tutorial services); housing and neighborhood improvement; rural development; and community improvement and jobs that provide supportive services to students with disabilities. A school must inform all eligible students of the opportunity to perform community services and must develop and make available information about community service opportunities.

Jobs Are for FWS and Non-FWS Students
34 CFR 675.31

FWS/JLD Termination and Suspension
34 CFR 675.37

JLD PROGRAM PARTICIPATION

A school that participates in the FWS Program is also eligible to participate in the JLD Program. A school that has an executed Program Participation Agreement (PPA) for the FWS Program is able to participate in the JLD Program without any prior contact with the U.S. Department of Education and without any revision to its PPA. The school under the PPA agrees to administer the JLD Program according to the appropriate statutory and regulatory provisions.

If the Department terminates or suspends a school's eligibility to participate in the FWS Program, that action also applies to the school's JLD Program.

STUDENT ELIGIBILITY

Any student employed in a job developed under the JLD Program must be currently enrolled at the school placing him or her in a job. A school may place in JLD jobs both students who do **not** meet FWS student eligibility criteria **and** those who do meet that criteria. However, using JLD funds to find jobs only for FWS students would not satisfy the program purpose of expanding off-campus jobs for students who want jobs regardless of financial need.

Restrictions on Using JLD Funds
34 CFR 675.32

Costs Not Allowed
34 CFR 675.33

USE OF FWS ALLOCATION FOR JLD PROGRAM

Jobs located or developed under the JLD Program may be for either a profit or nonprofit employer. When establishing or expanding a program to locate and develop off-campus jobs, **including community service jobs**, a school may use **up to the lesser** of the following two amounts:

- 10 percent of its FWS allocation and reallocation
- $50,000

USE OF JLD PROGRAM FUNDS

Federal JLD funds are used to pay a school's costs of establishing and administering the JLD Program. The JLD funds are not to be used to pay students whose jobs were located or developed through the JLD Program. A job located and developed under the program must be suitable to the scheduling and other needs of the employed student and must, to the maximum extent practicable, complement and reinforce the educational program or vocational goal of the student.

A school is expected to generate total student wages exceeding the total amount of the federal funds spent under JLD. The school cannot locate or develop jobs at the school or other eligible schools. JLD jobs may be full time or part time. Jobs located or developed under the program must not displace employees or impair existing service contracts. The purpose of the JLD Program is to locate and develop off-campus jobs for students during and between periods of attendance, not to develop jobs for placement upon graduation.

FEDERAL SHARE LIMITATION

The federal funds that a school sets aside from its FWS allocation to be used for JLD activities may be used to pay up to 80 percent of the allowable costs (listed below). The school must provide the remaining 20 percent of allowable costs either in cash or in services. This requirement, unlike the institutional share requirement for FWS earnings, cannot be waived. The school must maintain records that indicate the amount and sources of its matching share. Procedures and records requirements for JLD are the same as those for all campus-based programs.

ALLOWABLE PROGRAM COSTS

Allowable costs of carrying out the JLD Program include

- staff salaries (and fringe benefits, if they are the same as those paid to other institutional employees in comparable positions and are not paid to a student employed through the FWS Program);
- travel expenses related to JLD activities;

- printing and mailing costs for brochures about the JLD Program;
- JLD telephone charges, including installation of a separate line for off-campus employers;
- JLD costs for supplies, equipment, and furniture;
- newspaper or other types of advertising that inform potential employers of the services JLD offers; and
- JLD workshops for students and employers.

Costs that are not allowable are costs related to purchasing, constructing, or altering the facilities that house a JLD project. Indirect administrative costs also are not allowable. One example of an indirect administrative cost is a portion of the salary of someone who is not directly involved in the program—the JLD director's supervisor, for example.

FWS STUDENTS AS STAFF IN THE JLD PROGRAM

A school may assign an FWS or a non-FWS student to work as a staff member in the JLD Program, as long as the student is not employed under the JLD Program. The prohibition against using JLD funds to locate and develop jobs at any school prevents a school from employing a JLD student (whether he or she is also an FWS student or not) to work as staff in the JLD Program. This prohibition does not, however, mean that the school is also prohibited from employing any student (FWS or non-FWS) to work as staff in the JLD Program. Student jobs as staff in the JLD Program are not located and developed with JLD funds, and the student wages earned working for the JLD Program are not reportable in the JLD section of the *Fiscal Operations Report and Application to Participate* (FISAP).

If a school places an FWS student as staff in the JLD Program, there are some important points to note. The statute and the FWS regulations prohibit the use of any funds allocated under the FWS Program from being used to pay the nonfederal share of FWS compensation to its students. Hence, the federal JLD funds may not be used to pay the nonfederal share of FWS wages earned by a student working as staff in the JLD Program. However, because JLD allowable costs include staff salaries, the school would use its own funds to pay the nonfederal share of the wages earned by an FWS student working as staff in the JLD Program and would count those funds in meeting the minimum 20 percent institutional share requirement.

JLD REPORTING ON THE FISAP

A school participating in the JLD Program must provide information on the FISAP concerning the uses of the JLD funds and an evaluation of the effectiveness of the JLD Program. The school reports in Part V, Section D of the FISAP the federal expenditures for

Agreements with Other Eligible Schools
34 CFR 675.34

JLD. In Part V, Section G, the school reports the total JLD expenditures, institutional expenditures for JLD, number of students for whom jobs were located or developed, and total earnings for the students.

MULTI-INSTITUTIONAL JLD PROGRAMS

A school that is participating in FWS may enter a written agreement with other eligible schools for those schools to establish and to operate a JLD Program for its students. The agreement must designate the administrator of the program and must specify the terms, conditions, and performance standards of the program. Each school that is part of the agreement retains responsibility for properly disbursing and accounting for the federal funds it contributes under the agreement.

For example, each school must show that its own students have earned wages that exceed the amount of federal funds the school contributed to locate and develop those jobs. This fiscal information must be reported on each school's *Fiscal Operations Report and Application to Participate* (FISAP).

If a school uses federal funds to contract with another school, suitable performance standards must be part of that contract. Performance standards should reflect each school's philosophy, policies, and goals for the JLD Program. A school may **not** develop performance standards, conditions, or terms that are inconsistent with the statute or regulations. In all cases, the performance standards should be clearly understandable, because they will be included in the formal written agreement that each party must observe as part of its responsibility within the particular arrangement.

Model Off-Campus Agreement

The paragraphs below are suggested as models for the development of a written agreement between a school and a federal, state, or local public agency or a private nonprofit organization that employs students who are attending that school and who are participating in the Federal Work-Study (FWS) Program. Institutions and agencies or organization may devise additional or substitute paragraphs as long as they are not inconsistent with the statute or regulations.

This agreement is entered into between _____, hereinafter known as the "Institution," and _____, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the Federal Work-Study Program [FWS].

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

1 brief descriptions of the work to be performed by students under this agreement;

2 the total number of students to be employed;

3 the hourly rates of pay, and

4 the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employer's payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

1 Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

2 Transportation for students to and from their work assignments will be provided by the institution at its own expense.

3 Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)[1]

1 The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the Federal Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

2 The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The institution is limited to determining whether the students meet the eligibility requirements for employment under the Federal Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

1 At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

2 In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

3 At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will furnish to the institution for each payroll period the following records for review and retention:

a Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

1. Although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording that specifies the employer's responsibility in case of injury on the job may also be advisable, since federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one state have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization that is ultimately determined to have been the student's employer when he or she was injured.

b A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll;[2] and

c Documentary evidence that students received payment for their work, such as photographic copies of canceled checks.

2. These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total federal share which is to be reimbursed to the organization or agency.

Part 4

CAMPUS-BASED PROGRAMS REFERENCE:

Federal Supplemental Educational Opportunity Grants

Part 4: Federal Supplemental Educational Opportunity Grant Program
Contents

Introduction

The purpose of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program is to encourage schools to provide grants to exceptionally needy undergraduate students to help pay for postsecondary education. This provision is in Section 413C(c)(2) of the Higher Education Act of 1965, as amended. Giving priority to applicants with exceptional financial need, schools selecting FSEOG recipients must use the selection criteria discussed in Chapter 1 of this Part.

RECENT CHANGES

The following changes result from the Higher Education Amendments of 1998. The first three changes became effective October 1, 1998. The fourth change becomes effective for the 2000-2001 award year.

- A school is required to offer (make available) a **reasonable proportion** of its FSEOG allocation to independent or less-than-full-time students.

- A school can now carry up to 10 percent of its current award year funds back to spend in the prior award year or forward to spend in the next award year.

- A school can now carry back any portion of its current award year funds to cover payments the school made to students after the end of the spring enrollment period in the prior award year.

- Starting with the 2000-2001 award year, the allocation formula changes. Under the new formula,

  Δ the base is equal to the total of the base guarantee plus the pro rata share received for the 1999-2000 award year,
  Δ the pro rata share is eliminated, and
  Δ the fair share calculation is based on all the excess funds after the base guarantees are met.

Selecting Recipients

PART 4
CHAPTER 1

GENERAL ELIGIBILITY REQUIREMENTS

To receive a Federal Supplemental Educational Opportunity Grant (FSEOG), a student must meet the applicable eligibility requirements listed in *SFA Handbook: Student Eligibility.* In addition, an eligible recipient must be an undergraduate student and must have financial need.

An undergraduate student is defined under the FSEOG Program as a student who is enrolled in an undergraduate course of study at an institution of higher education and who

- has not earned a bachelor's degree or first professional degree and
- is in an undergraduate course of study that usually does not exceed four academic years or is enrolled in a four- to five-academic-year program designed to lead to a first degree.[1]

A student who has earned a bachelor's or first professional degree is **not** eligible to receive an FSEOG to pursue an **additional** undergraduate degree,[2] based on the above definition of undergraduate student.

A school must make FSEOG funds reasonably available (to the extent of available funds) to all eligible students.

FSEOG Undergraduate Student Definition
34 CFR 676.2

First Selection Group Criteria Example
For example, Steve and Bill are enrolled at Ruthless Business School in a program that begins in June 1998 and ends in August 1998, and both are among those students with the lowest EFCs who will also receive Pell Grants ***in that payment period****. Even though Steve is receiving a 1997-98 Pell Grant disbursement for that payment period and Bill is receiving a 1998-99 Pell Grant disbursement for that payment period, both students have met the first-selection-group requirements for that payment period.*

1. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

2. Note that the definition of undergraduate student in the FSEOG regulations differs from the definition in the Federal Perkins Loan and FWS program regulations (see 34 CFR 674.2 and 675.2). The definition of undergraduate student in the Federal Perkins Loan and FWS program regulations does permit a person with a bachelor's or first professional degree to receive aid from those programs to pursue an additional undergraduate degree.

Payment Period Crossing July 1
Dear Colleague Letter CB-91-8, dated May 1991

PRIORITY ORDER FOR FSEOGs

In determining the priority order in which students will be awarded FSEOG funds in any given award year, a school must first choose those students with exceptional financial need—that is, those with the lowest Expected Family Contributions (EFCs) who will also receive Federal Pell Grants in that award year. We will refer to this group of students as the "first selection group."

If the school has FSEOG funds remaining after awarding FSEOG funds to the entire first selection group, the school must next award FSEOG funds to those eligible students with the lowest EFCs who will not receive Federal Pell Grants in that award year. We will refer to this group of students as the "second selection group."

CONSIDERING FEDERAL PELL GRANT ELIGIBILITY

A student who will also receive a Federal Pell Grant in that award year is a student who has demonstrated Pell Grant eligibility for the same award year based upon

- a *Student Aid Report* (SAR) the student submits to the school,
- an *Institutional Student Information Record* (ISIR) the school receives from the Central Processing System (CPS), or
- a manual calculation.

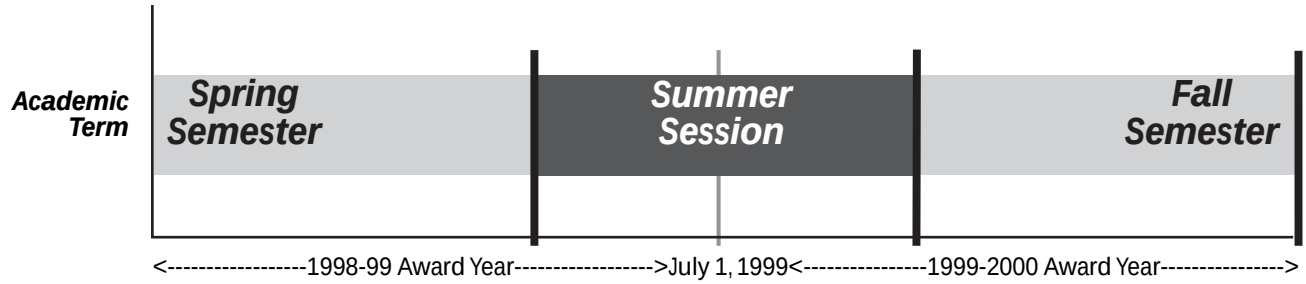
The school must keep the appropriate Pell Grant eligibility information on file. If the school determines a student's Pell Grant eligibility by one of the above methods and awards an FSEOG based on that determination but the FSEOG recipient does not actually receive a Pell Grant during the award year, the school relied on the demonstrated eligibility in good faith and, thus, is not required to recover the FSEOG funds.

If a student is enrolled in a payment period that begins in one award year and ends in the next[3] and if the student is among those students with the lowest EFCs who will also receive Pell Grants **in that payment period**, the student has met the first-selection-group requirements **(for that payment period only)** regardless of the award year to which his or her Pell Grant payment period is attributed.

"Payment period" is defined as a semester, trimester, or quarter; for a school not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

3. The payment period begins before July 1 of any year and ends after July 1 of that same year.

First Selection Group/Payment Period Crossing July 1 Example (Standard-Term School)



LESS-THAN-FULL-TIME AND INDEPENDENT STUDENTS

Handling Less-Than-Full-Time and Independent Students
34 CFR 676.10(b)

Previously, a school was required to offer at least 5 percent of its FSEOG allocation to less-than-full-time and independent students if the school's FSEOG Program allocation was directly or indirectly based in part on the financial need of these students and if the financial need of all such students exceeded 5 percent of the total financial need of all students at the school. As a result of the Higher Education Amendments of 1998, a school is now required to offer a **reasonable proportion** of its FSEOG allocation to independent or less-than-full-time students. A school cannot exclude less-than-half-time students from its definition of less-than-full-time students. This requirement is effective October 1, 1998. Additional information is in Part 1, Chapter 1 of this Reference.

MAKING FSEOGs AVAILABLE THROUGHOUT THE YEAR

A school must develop written selection procedures to ensure that FSEOG recipients are selected on the basis of the lowest EFC and Pell Grant priority requirements over the entire award year in accordance with the selection provisions found in 34 CFR 676.10. For a school that enrolls students as often as monthly or weekly, FSEOG funds can be reserved for use throughout that award year (on the basis of institutional experiences from previous periods), and selection practices can be applied in a manner that would assure a reasonable consistency over the entire award year.

ESTABLISHING CATEGORIES OF STUDENTS

The school is allowed to establish categories of students to be considered for FSEOGs as a means of administering its packaging policies. Categories may be based on class standing, enrollment status, program, date of application, or a combination of factors. By establishing these categories, the school is attempting to ensure that the students in each category have an opportunity to be awarded FSEOG funds. The percentage or dollar amount of funds assigned to each category is also at the school's discretion; there is no requirement

to make that amount proportional to the need of students in a particular category or even to the number of students in the category.

Categorization may not be used to exclude certain students or groups of students from consideration. If the school knows that its funds are so limited as to effectively exclude year after year categories that come later in the sequence, the school may not be in compliance with the "reasonably available" provision. This principle would not apply to a category made up of students whose applications are received after a specific deadline; there is no requirement to reserve funds for late applicants although the school is not precluded from doing so.

A school would not be in compliance with the Higher Education Act of 1965 (HEA), as amended, and with the FSEOG regulations were it to award FSEOGs on a first-come, first-served basis or were it arbitrarily to set expected EFC benchmarks (cutoffs) from below which it would select FSEOG recipients. Such a practice might exclude otherwise eligible students from the selection process. Furthermore, professional judgment is not an appropriate means of attempting to resolve the indicated circumstance; professional judgment is applicable only to making an adjustment or adjustments to an expected EFC or to a cost of attendance amount, not as a means to circumvent the FSEOG selection policy.

Payments to Students

MINIMUM AND MAXIMUM AWARD AMOUNTS

A school may award a Federal Supplemental Educational Opportunity Grant (FSEOG) in an amount the school determines a student needs to continue his or her studies for an academic year. A student's minimum allowable award for an academic year may be reduced proportionately if the student is enrolled for less than an academic year. An FSEOG may not be less than $100 and may not exceed $4,000 for a full academic year unless the student has reasonable costs of study abroad that exceed the cost of attendance at the home school. A school may increase the maximum amount of the FSEOG from $4,000 to as much as $4,400 for a student participating in a study-abroad program that is approved for credit by the home school.

GENERAL DISBURSEMENT REQUIREMENTS

A school must disburse FSEOG funds to a student or the student's school account in accordance with the cash management regulations in 34 CFR 668.164. The cash management requirements that apply specifically to the campus-based programs are discussed in Part 1, Chapter 3 of this Reference. The provisions that apply to all Student Financial Assistance (SFA) programs are discussed in detail in *SFA Handbook: Institutional Eligibility and Participation*.

If a student withdraws (officially or unofficially) or is expelled before the first day of classes, the school must return to the FSEOG account any funds that were paid to the student. A student who does not begin class attendance is deemed to have withdrawn. If a student drops out **after** receiving his or her FSEOG but before the end of the payment period, the school determines the amount of any refund and repayment as discussed in *SFA Handbook: Institutional Eligibility and Participation*.

Late Payment Conditions
34 CFR 668.164(g)

FREQUENCY OF DISBURSEMENTS

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

In general, to determine the amount of each disbursement, a school will divide the total FSEOG award by the number of payment periods the student will attend. For a school that measures progress in credit hours and has academic terms, a payment period is defined as a term (a semester, trimester, quarter, or nonstandard term). The definition of payment period for a school that does not have academic terms or a school that measures progress in clock hours is discussed in detail in *SFA Handbook: Institutional Eligibility and Participation* and 34 CFR 668.4.

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

UNEVEN COSTS/UNEQUAL DISBURSEMENTS

If the student incurs uneven costs or receives uneven resources during the year and needs extra funds in a particular payment period, a school may make unequal FSEOG disbursements. The school may also make unequal disbursements under the Federal Perkins Loan Program. For a discussion of uneven costs and unequal disbursements, see Part 2, Chapter 2 of this Reference.

LATE DISBURSEMENTS

A school may make a late FSEOG disbursement to an ineligible student if the student became ineligible solely because the student is no longer enrolled at the school for the award year. Before the student dropped out, the school must have received a Student Aid Report (SAR) or Institutional Student Information Record (ISIR) for the student with an official Expected Family Contribution (EFC) and must have awarded the student the FSEOG. The school may make that late disbursement only if the funds are used to pay for educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible, and the school must make the late disbursement no later than 90 days after the date the student became ineligible because he or she was no longer enrolled.

FSEOG OVERAWARDS AND OVERPAYMENTS

To determine if a student has received an FSEOG overaward or overpayment, a school must follow the procedures in 34 CFR 673.5. A list of resources and a discussion of overawards and overpayments are included in Part 1, Chapter 2 of this Reference.

COORDINATION WITH BUREAU OF INDIAN AFFAIRS GRANTS

To determine the amount of an FSEOG for a student who is also eligible for an educational grant from the Bureau of Indian Affairs (BIA), a school must coordinate the awards according to the provisions of 34 CFR 673.6, discussed in Part 1, Chapter 2 of this Reference.

Program Funds

PART 4
CHAPTER 3

The Higher Education Act of 1965 (HEA), as amended, describes the Federal Supplemental Educational Opportunity Grant (FSEOG) Program allocation process in detail; those procedures are not repeated in the regulations. Funds are allocated directly to schools according to the statutory formulas in section 413D of the Act. Schools receive their disbursements in periodic installments either in advance or as reimbursements. The U.S. Department of Education ***reallocates*** *funds to a school in a manner that best carries out the purposes of the FSEOG Program.*

MAINTAINING FUNDS

A school must maintain funds received for its administration of the FSEOG Program in accordance with the cash management provisions of 34 CFR 668.163. The provisions are discussed in *SFA Handbook: Institutional Eligibility and Participation*.

As discussed in the Introduction to Part 1 of this Reference, if a school returns more than 10 percent of its allocation for a given award year, the Department will reduce the school's allocation for the second succeeding award year by the dollar amount returned. The Department may waive this provision for a specific school if it finds that enforcement would be contrary to the interest of the program. The Department considers enforcement to be contrary to the interest of the program only if the school returned more than 10 percent of its allocation due to circumstances that are beyond the school's control and that are not expected to recur. The information a school provided on its *Fiscal Operations Report and Application to Participate* (FISAP) for the 1997-98 award year will determine the amount of reduction, if any, of the school's allocation for the 1999-2000 award year.

Allocation of Funds
34 CFR 673.4

Waiver of 25-percent Requirement
34 CFR 676.21

FEDERAL SHARE AND NONFEDERAL SHARE

The federal share of FSEOGs made by a school may not exceed 75 percent of the total FSEOGs. The school must contribute a nonfederal share (also called "institutional share") of 25 percent. However, the Department may waive the nonfederal share requirement and may authorize for an award year a federal share of 100 percent to a school that 1) is designated as an eligible institution under the Strengthening Institutions Program or the Strengthening Historically Black Colleges and Universities Program and 2) requests the waiver on the FISAP for that award year.

Including State Scholarships
34 CFR 676.21

The nonfederal share of FSEOGs must be made from the school's own resources. These resources may include

- institutional scholarships and grants,
- waivers of tuition or fees,
- state scholarships and grants, and
- funds from foundations or other charitable organizations.

Including State Scholarship Example
Tina receives a grant of $600 from a state with a percentage of 92.35. Delgado Broadcasting School multiplies 92.35 percent by $600, resulting in $554, which is the portion of the grant that may be used to meet the nonfederal share requirement for a $2,300 FSEOG award ($1,746 is the federal share of the FSEOG award).

The Department has determined that all state scholarships and grants, **except** for the Leveraging Educational Assistance Partnership (LEAP) Program (formerly the State Student Incentive Grant [SSIG] Program), are eligible funds that may be used to meet the nonfederal share requirement of FSEOGs. LEAP grants, for this purpose, are defined as the federal LEAP allocation plus the minimum required state matching amount. The remaining state grants are not considered LEAP grants.

Percentage of State Scholarships That May Be Used as Nonfederal Share
Dear Colleague letter CB-96-16, August 1996

Dear Colleague Letter CB-98-15, issued in September 1998, provided a chart indicating what percentage of each state's scholarships could be used to provide the nonfederal share of FSEOGs for the 1998-99 award year. The Department computed the percentages in the chart on the basis of information furnished by the respective states regarding expected expenditures for state scholarships and grants for the 1998-99 award year, and by using the 1998-99 SSIG allocation data and required matching information. A similar chart for the 1999-2000 award year will be issued in a Dear Colleague Letter later in 1999. Each school can apply the appropriate state percentage to the state scholarships and grants its students receive to determine the total amount of state scholarships and grants that may be used to meet the FSEOG nonfederal share requirement.

As a variance from use of the percentages indicated in the chart, if a school has specific knowledge that a state scholarship or grant—irrespective of its name—is considered to be the required state matching portion of a LEAP grant, that scholarship or grant may not be used to meet the FSEOG nonfederal share. Also, if a school has documented knowledge that a state scholarship or grant is not comprised of LEAP monies (federal or state), 100 percent of the scholarship or grant may be used as the FSEOG nonfederal share.

The 1999-2000 nonfederal share requirement of 25 percent (unless the school qualifies for a waiver) may be met by one of three methods. In the following discussion of these methods, you should note that for a student to meet the definition of an FSEOG recipient, some portion of the grant awarded the student must have come from the FSEOG federal dollars. Also, by the time the FSEOGs are disbursed (regardless of what point in the award period the disbursements are made), the required match must have been accomplished; that is, the school's own resources must have been disbursed before

Cash Management
34 CFR 668.163

or at the time the federal dollars are disbursed. However, it is important to note that outside resources[1] can be used to match FSEOGs even if the funds are received at a later date, provided that the school has written information about funds that the noninstitutional agency or organization is awarding to the student involved. The written information must be kept on file at the school.

The three methods a school may use to meet its nonfederal share follow:

1 Individual FSEOG recipient basis—the school provides its share to an individual FSEOG recipient together with the federal share; that is, each student's total FSEOG would consist of 25 percent nonfederal resources and 75 percent federal dollars for the 1999-2000 award year.

2 Aggregate basis—the school ensures that the sum of all funds awarded to FSEOG recipients in the 1999-2000 award year comprises 75 percent FSEOG federal funds and 25 percent nonfederal resources. For example, if a school awards a total of $60,000 to FSEOG recipients in 1999-2000, it has to ensure that $45,000 comes from FSEOG federal funds and $15,000 comes from nonfederal resources; if there are 100 FSEOG recipients, the entire $15,000 nonfederal resource requirement can be met by awarding a total of $15,000 in nonfederal resources to four FSEOG recipients. However, each FSEOG recipient must receive some FSEOG federal funds.

3 Fund-specific basis—the school establishes an "FSEOG fund" into which it deposits FSEOG federal funds and the required 25 percent nonfederal share. Awards to FSEOG recipients then are made from the fund.

ADMINISTRATIVE COST ALLOWANCE

When a school calculates its administrative cost allowance for the 1999-2000 award year, the school must include in its calculation the full amount of its FSEOGs—both the 75 percent federal share and the required 25 percent nonfederal share. However, a school that chooses to provide more than a 25 percent institutional share to FSEOG recipients may not include an FSEOG institutional share in excess of 25 percent in its FISAP or in the calculation of its administrative cost allowance. If the Department has granted a school a waiver of its required nonfederal share, that school may calculate its administrative cost allowance only on the full federal portion. For additional information about the administrative cost allowance, refer to Part 1, Chapter 3 of this Reference.

1. For example, state scholarships and foundation or other charitable organization funds.

Recordkeeping Requirements
34 CFR 668.24 & 676.19

Fiscal Procedures and Records Requirements
34 CFR 676.19

CARRY FORWARD/CARRY BACK

Effective October 1, 1998, a school may spend up to 10 percent of its current year's FSEOG allocation (initial and supplemental) in the **following** award year (carry forward). If the school carried forward funds to be spent in the following award year, the school must report that amount on the FISAP. For example, if a school carried forward 10 percent of its Federal Work-Study (FWS) 1998-99 allocation to be spent in 1999-2000, the school must report this amount on the October 1999 FISAP, in Part V of the Fiscal Operations Report for 1998-99. Before a school may spend its current year's allocation, it must spend any funds carried forward from the previous year.

Also effective October 1, 1998, a school is permitted to spend a portion of its current year's FSEOG allocation (initial and supplemental) to cover payments made to students after the end of the spring enrollment period in the prior award year (carry back).

TRANSFER OF FUNDS FROM FSEOG PROHIBITED

The HEA prohibits the transfer of FSEOG Program funds to any other program. Since the 1993-94 award year, schools have been prohibited from transferring FSEOG funds to the FWS Program. However, a school may transfer up to 25 percent of its FWS allocation and 25 percent of its Federal Perkins Federal Capital Contribution (FCC) allocation to the FSEOG Program.

A school that transfers funds to the FSEOG Program from FWS during an award year must transfer any unexpended funds **back** to the FWS Program at the end of the award year. The same requirement exists for Perkins Loan FCC funds transferred to the FSEOG Program.

FISCAL PROCEDURES AND RECORDS

Requirements for maintaining and accounting for Student Financial Assistance (SFA) program funds are included in 34 CFR 668.163. The cash management requirements that apply in general to SFA programs (those in the General Provisions) are discussed in *SFA Handbook: Institutional Eligibility and Participation*. The cash management requirements specific to the campus-based programs (those in the FWS, FSEOG, and Perkins Loan regulations) are discussed in Part 1, Chapter 3 of this Reference.

A school must follow the recordkeeping requirements in the General Provisions and those in the FSEOG regulations. The recordkeeping requirements that apply in general to SFA programs (those in the General Provisions) are discussed in *SFA Handbook: Institutional Eligibility and Participation*. The recordkeeping requirements specific to the campus-based programs (those in the FWS, FSEOG, and Perkins Loan regulations) are discussed in Part 1, Chapter 3 of this Reference. Information on FWS payroll records is provided in Chapter 3 of this Part.

In addition to following the fiscal procedures and records requirements mentioned in *SFA Handbook: Institutional Eligibility and Participation,* in Part 1, Chapter 3, and in Chapter 3 of this Part, a school must meet the following requirements, which are included in the FSEOG regulations:

- A school must establish and maintain an internal control system of checks and balances that insures that no office can both authorize FSEOG payments and disburse FSEOG funds to students.

- A school must establish and maintain program and fiscal records that are reconciled at least monthly.

- Each year a school must submit a FISAP and other information the Department requires. The information must be accurate and must be provided on the form and at the time specified by the Department.