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Part III

Department of Education

34 CFR Part 674

Federal Perkins Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1840–AC70

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan Program regulations. These proposed regulations are needed to implement the changes to the Higher Education Act of 1965, as amended (the HEA), resulting from the Higher Education Amendments of 1998 (the 1998 Amendments). The proposed regulations reflect the provisions of the 1998 Amendments that affect the institutions that participate in, and borrowers who have loans made under, the Federal Perkins Loan Program. These proposed regulations would expand borrower benefits under the Federal Perkins Loan program by increasing loan limits, expanding borrower eligibility for deferments and cancellations, establishing a loan rehabilitation program for borrowers in default on their Federal Perkins Loans, establishing an incentive repayment program, and providing a closed school discharge.

DATES: We must receive your comments by September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Ms. Gail McLarnon, Program Specialist, Policy Development Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, Regional Office Building 3, Washington, DC 20202–5449. If you prefer to send your comments through the Internet, use the following address: perkinsnprm@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Ms. Gail McLarnon, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday, of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

Background

On October 7, 1998, President Clinton signed into law the Higher Education Amendments of 1998 (the 1998 Amendments), Pub. L. 105–244, that amended the Higher Education Act of 1965, as amended (the HEA). This notice of proposed rulemaking (NPRM) addresses the changes that affect the Federal Perkins Loan Program.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, D.C., Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or

groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

Proposed regulations contained in this NPRM reflect the final consensus of negotiating Committee II, which was made up of the following members:

- American Association of Community Colleges.
- American Association of Cosmetology Schools.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Coalition of Associations of Schools of the Health Professions.
- Coalition of Higher Education Assistance Organizations.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Legal Services Counsel (a coalition).
- National Association of College and University Business Officers.
- National Association for Equal Opportunity in Higher Education.
- National Association of Graduate/Professional Students.
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs.
- National Association of State Universities and Land-Grant Colleges.
- National Association of Student Financial Aid Administrators.
- National Association of Student Loan Administrators.
- National Council of Higher Education Loan Programs.
- National Direct Student Loan Coalition.
- Sallie Mae, Inc.
- Student Loan Servicing Alliance.
- The College Board.
- The College Fund/United Negro College Fund.
- United States Department of Education.
- United States Student Association.
- U.S. Public Interest Research Group.

Under committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

The Secretary will publish a technical correction package at a later date that replaces all references to ''Direct Loan'' in the Federal Perkins Loan Program and Student Assistance General Provisions regulations with ''National Direct Student Loan Program'' or the acronym ''NDSL.'' The negotiators agreed that such a change would eliminate confusion between the National Direct Student Loan Program and the William D. Ford Federal Direct Student Loan Program.

Summary of Proposed Regulatory Changes

We propose to amend the following sections of the regulations:

Section 674.2 Definitions

We propose to amend § 674.2 by adding a definition of the term ''satisfactory repayment arrangement'' in accordance with changes made to the 1998 Amendments. The 1998 Amendments define ''satisfactory repayment arrangements'' as the return of Title IV HEA eligibility to a defaulted Federal Perkins Loan borrower, to the extent the borrower is otherwise eligible, if the borrower makes six on-time, consecutive, monthly payment of amounts owed on the loan. As specified in the 1998 Amendments, the proposed regulations would authorize the restoration of the borrower's Title IV eligibility only once on a defaulted Federal Perkins loan.

Section 674.5 Federal Perkins Loan Program Default Rate and Penalties

Effective with the 2000–2001 award year, the 1998 Amendments eliminate the requirement that an institution file a default reduction plan with the Secretary if the institution's cohort default rate equals or exceeds 15 percent. The 1998 Amendments also eliminate the series of graduated default penalties imposed on institutions with cohort default rates that equal or exceed 20, 25, or 30 percent or more in favor of one default penalty of zero if an institution's cohort default rate equals or exceeds 25 percent. A default rate penalty of zero eliminates an institution's Federal Capital Contribution. We are proposing to amend § 674.5 to reflect these changes.

For award years that precede award year 2000–2001, the 1998 Amendments also contain a provision that exempts an institution from the default reduction plan filing requirement if the institution has less than 100 students who have Federal Perkins Loans in that academic year and a cohort default rate that is equal to or greater than 15 percent but less than 20 percent. The negotiators agreed not to develop proposed regulations that reflect this change because the final regulations that implement this provision would be outdated immediately upon taking effect on July 1, 2000. However, because the 1998 Amendments were enacted on October 7, 1998, the Secretary will not require an institution that meets the statutory criteria to file a default reduction plan for award years 1998–99 and 1999–2000.

The proposed regulations would further amend this section to reflect a new default penalty established by the 1998 Amendments that terminates the eligibility to participate in the Federal Perkins Loan Program if an institution has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. An institution would be ineligible to participate for the award year in which the determination is made and the two succeeding award years. Under the proposed regulations, the new ineligibility default penalty would become effective with the cohort default rate calculated as of June 30, 2001. The negotiating committee agreed that the cohort default rate calculated as of this date will represent the last of the three most recent years of available cohort default rate data used by the Secretary to make a determination of ineligibility. Thus, the cohort default rates calculated as of June 30, 2001, June 30, 2000, and June 30, 1999 would be the three years used by the Department to make the initial determination of ineligibility under the proposed regulations.

The proposed regulations would allow an institution to appeal a determination of ineligibility, within 30 days of notification by the Secretary, based on an inaccurate calculation of its cohort default rate if a recalculation using corrected data would reduce the institution's cohort default rate to below 50 percent for any of the three award years used to make the determination. This appeal is discussed more fully in the next paragraph. An institution may also appeal if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used to make a determination of ineligibility. For example, an institution might have 5 borrowers entering repayment in the first year, 15 borrowers entering repayment in the second year and 10 borrowers entering repayment in the third year, for an average of 10 borrowers entering repayment per year over the three-year period used to make an eligibility determination. The Secretary has 45 days to issue a decision following the institution's timely submission of a complete and accurate

appeal, during which time the institution may continue to participate in the program. If an institution's appeal is denied by the Secretary, the institution must liquidate its revolving student loan fund in accordance with section 466A of the HEA and assign any outstanding loans to the Secretary in accordance with § 674.50 of the Federal Perkins Loan Program regulations.

In the Federal Perkins Loan Program, an institution's cohort default rate is calculated based on data submitted to the Secretary by the institution on its Fiscal Operations Report and through the edit process used by the institution to adjust the data on its Fiscal Operations Report. We recognize that in order to appeal a notice of ineligibility based on an inaccurate calculation of this data, the institution must correct its own data submission. We consider the complete and timely re-submission of corrected data, both in writing and through the edit process, to be the mechanism an institution uses to affect an appeal. The negotiating Committee agreed that this procedure provided adequate due process since the school submits the actual data used to calculate its Federal Perkins Loan Program cohort default data.

We recognize that the process used to calculate an institution's cohort default rate is unique to the Federal Perkins Loan Program. If, at any time in the future, the National Student Loan Data System (NSLDS) or another method is used to calculate an institution's Federal Perkins Loan Program cohort default rate, we will revisit and revise accordingly the regulations that govern the appeal process under this section.

We are also proposing to amend this section of the regulations to reflect provisions in the 1998 Amendments that allow an institution to exclude loans from its cohort default rate calculation. These exclusions include loans on which the borrower has voluntarily made six consecutive payments, voluntarily made all payments currently due, repaid the loan in full, received a deferment or forbearance based on a condition that predates the borrower reaching a 240/270-day past due status, or rehabilitates the loan after becoming 240/270 past due. The proposed regulations would also allow an institution to remove a loan that is canceled due to death or permanent and total disability, discharged in bankruptcy, forgiven due to a closed school situation, or repaid in full under the compromise repayment provisions contained in § 674.33(e) of the Federal Perkins Loan program regulations.

The 1998 Amendments require that the payments a borrower makes when making six consecutive payments or bringing the loan current be ''voluntary'' payments in order for a school to exclude the borrower from its cohort default rate calculation. In order to clarify the proposed regulations and avoid confusion when a school calculates its cohort default rate, we are proposing that ''voluntary'' payments exclude payments obtained by income tax offset, wage garnishment, income or asset execution, or pursuant to a judgment. Generally, payments obtained by these methods are automatically deducted from the borrower's tax return, wages or assets and the borrower has no control or choice in the payment process. Payments made pursuant to a judgment, although not always automatic, are payments made as the result of a court order and represent last resort due diligence efforts on the part of the school to obtain payment from the borrower. For this reason, the negotiators agreed that payments obtained by judgment also should not be considered voluntary for the purposes of calculating the Federal Perkins Loan Program cohort default rate.

We are also proposing to add the requirement that the six consecutive voluntary payments that a borrower makes on a defaulted loan be ''monthly'' payments in order for a school to remove that borrower from its cohort default rate calculation. We are proposing the addition of the word monthly to provide consistency in interpreting the timeframe in which the payments must be made. We are also proposing to require monthly payments to maintain regulatory consistency in this area. The Federal Perkins Loan Program regulations, as currently written, allow schools to remove a borrower from its cohort default rate calculation if the borrower has made six, consecutive, monthly payments on a defaulted loan.

In accordance with the 1998 Amendments, the proposed regulations would eliminate an institution's authority to exclude improperly serviced loans from its cohort default rate.

Lastly, the paragraphs in this section that describe satisfactory arrangements to repay the loan and loan rehabilitation have been deleted and relocated for administrative ease. The 1998 Amendments modified the definition of satisfactory repayment arrangements and authorized a loan rehabilitation program in the Federal Perkins Loan Program. These provisions are reflected in §§ 674.2 and 674.39 of the proposed regulations.

Section 674.6 Default Reduction Plan

For award year 2000–2001 and succeeding award years, the 1998 Amendments eliminate the requirement that an institution with a cohort default rate that equals or exceeds 15 percent establish and implement a default reduction plan. Therefore, we are proposing to remove the default reduction plan provisions contained in § 674.6 from the Federal Perkins Loan Program regulations.

Section 674.7 Expanded Lending Option

Effective October 1, 1998, the 1998 Amendments eliminated the Expanded Lending Option in the Federal Perkins Loan Program. This option previously allowed participating institutions to lend at higher limits after depositing an Institutional Capital Contribution equal to 100 percent of their Federal Capital Contribution into their Perkins Loan Revolving Fund. The proposed regulations would eliminate the expanded lending option provisions in § 674.7 to reflect this statutory change.

Section 674.9 Student Eligibility

The 1998 Amendments authorize the use of the same criteria that remove a borrower from an institution's cohort default rate in § 674.5 to re-establish a borrower's eligibility for additional Federal Perkins Loans. Accordingly, we are proposing to revise § 674.9 by adding a new paragraph that re-establishes a borrower's eligibility for a Perkins Loan if the borrower voluntarily makes six consecutive monthly payments, voluntarily makes all payments currently due, repays the loan in full, receives a deferment or forbearance based on a condition that predates the borrower reaching a 240/270-day past due status, or rehabilitates the loan after becoming 240/270 days past due. A borrower's eligibility for a Perkins Loan is also re-established if the borrower's loan is discharged due to permanent and total disability, discharged in bankruptcy, forgiven due to a closed school situation, or repaid in full in accordance with § 674.33 of the Federal Perkins Loan Program regulations.

For the purpose of a borrower re-establishing eligibility for a Perkins Loan under this section, the proposed regulations would define ''voluntary'' payments as those payments made directly by the borrower, including payments made over and above a payment made pursuant to a judgment. We are proposing to define payments made over and above the payments required on a judgment as voluntary

because the borrower is freely choosing to make a payment of this nature. Payments made over and above those required on a judgement are not automatic nor are they required. The negotiators agreed that a borrower who opts to make payments over and above payments made pursuant to a judgment is making a good faith effort to repay the debt and should not lose the benefit of Federal Perkins Loan eligibility.

For the purpose of re-establishing a borrower's eligibility for a Federal Perkins Loan, the proposed definition of voluntary payments excludes payments made under the following conditions because a borrower has no control or choice in making these types of payments:

- Payments obtained by income tax offset.
- Payments obtained through wage garnishment.
- Payments obtained through income or asset execution.
- Payments made pursuant to a judgment.

Section 674.12 Loan maximums

The 1998 Amendments increase annual maximum loan amounts and increase the aggregate maximum loan amounts allowable for an eligible student to the levels formerly authorized for schools that participated in the Expanded Lending Option. The proposed regulations reflect the following increased annual loan limits for all eligible borrowers: $4,000 for a student who has not successfully completed a program of undergraduate education and $6,000 for a graduate or professional student. The proposed regulations would require that aggregate loan limits not exceed $40,000 for graduate and professional students, $20,000 for a student who has successfully completed two years of a program of education leading to a bachelor's degree but who has not completed his or her degree work, and $8,000 in the case of students who have not completed the first two years of undergraduate work.

During the negotiated rulemaking discussions on this section, the Committee discussed whether this proposed change would create the potential for the inadvertent overaward of Federal Perkins Loans in excess of the new statutory aggregate maximum of $8,000, especially on loans made on or about the date of enactment. Loan maximums in effect prior to enactment of the 1998 Amendments did not tie aggregate loan limits to the completion of two years of undergraduate education. We are aware of this potential problem and will not require resolution of an overaward made prior to the publication of this proposed regulation if a Federal Perkins Loan borrower was inadvertently awarded an amount in excess of the new statutory aggregate maximum of $8,000 and did not complete two years of undergraduate work.

The 1998 Amendments also changed the definition of aggregate loan limits to include only unpaid principal as is the case in the Federal Family Education Loan and Federal Direct Loan Programs. This change allows a borrower who has borrowed the maximum cumulative amount as an undergraduate or professional student to re-establish eligibility for further Perkins loans up to the principal amount the borrower has repaid. Our proposed amendments to § 674.12 of the regulations reflect this change as well.

Section 674.16 Making and Disbursing Loans

The proposed regulations would amend this section, in accordance with the 1998 Amendments, to clarify the credit bureau reporting requirements with which an institution must comply after making and disbursing a Federal Perkins Loan. The proposed regulations would amend § 674.16 to require that an institution report to at least one national credit bureau information concerning the repayment and collection of the loan until the loan is paid in full, including the date the loan was repaid, canceled or discharged for any reason. The proposed regulations would also add a new paragraph that requires an institution to report promptly any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported. The negotiators agreed that reporting a change of information on a loan to the same credit bureaus to which it was previously reported was an important protection for the borrower should the school decide to contract with a different credit bureau at a later date. Reporting changes of information on a loan to the same credit bureaus provides a consistent picture of the borrower's credit history and eliminates the risk that negative credit history might remain on the borrower's record when, in fact, it should have been removed or updated.

Section 674.31 Promissory Note

The proposed regulations would amend § 674.31, in accordance with the 1998 Amendments, to exclude from a Federal Perkins Loan Program borrower's initial grace period any period, not to exceed three years, during which a borrower who is a member of the Armed Forces reserve component is called or ordered to active duty for a period of more than 30 days. The proposed regulations would require that any single excluded period may not exceed three years and must include the time necessary for the borrower to resume enrollment at the next available regular enrollment period. We are also proposing that any borrower in a grace period when called or ordered to active duty be entitled to another full six or nine-month grace period upon completion of the excluded period of service.

Discussion of this provision at the negotiated rulemaking sessions focused on the valuable service that these borrowers are providing to our country as members of the Armed Forces reserve component and the care that must be taken not to penalize borrowers returning from active duty. In this regard, we would like to clarify that the time period in which a borrower must re-enroll in the ''next available enrollment period'' after returning from active duty service in the Armed Forces may be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional program. Additionally, the possibility exists that borrowers may not re-enroll in the same program in which they were enrolled at the time they were called to active duty. It was the consensus of the negotiating team that the proposed regulations should provide flexibility in the administration of these aspects of a borrower's grace period.

The proposed regulations would also amend § 674.31 by requiring an institution to disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information, so as to not restrict an institution from reporting to more than one credit bureau should the institution desire to do so. Previously, this section required an institution to report to any one national credit bureau.

Section 674.33 Repayment

The proposed regulations would amend § 674.33 to reflect a new provision of the 1998 Amendments that authorizes an institution to establish an incentive repayment program to reduce defaults and replenish its Federal Perkins Loan revolving fund. The proposed regulations would authorize an institution to offer a reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly payments; a discount of no more than five percent on the balance owed on a loan if the borrower pays in full prior to the end of the repayment period; and,

with the Secretary's approval, any other incentive an institution determines will reduce defaults and replenish its fund. The proposed regulations reflect the requirement in the 1998 Amendments that an institution not use Federal funds, including Federal funds from its Federal Perkins Loan revolving fund, or institutional funds from the fund to pay for any repayment incentive. In this regard, the proposed regulations require an institution to reimburse its Fund, on at least a quarterly basis, for any money lost to its Fund that otherwise would have been paid by the borrower if the borrower had not received the repayment incentive. The negotiators agreed that unless a school reimburses its Federal Perkins Loan revolving fund for the money lost to incentives, funding for future Federal Perkins Loan borrowers might be jeopardized.

The proposed regulations would also amend § 674.33 by adding a new section that implements a closed school discharge for Federal Perkins Loan borrowers as authorized by the 1998 Amendments. Prior to passage of the 1998 Amendments, the Secretary lacked the statutory authority to discharge a Federal Perkins Loan due to a closed school situation. The proposed regulations would authorize the holder of the loan to discharge a borrower's total liability on any loan made under the Federal Perkins Loan Program on or after January 1, 1986, if the borrower is unable to complete the program of study in which the borrower is enrolled due to the institution's closure. The proposed regulations would require that the borrower be reimbursed for any amounts the borrower paid on a discharged loan either voluntarily or through enforced collection. A borrower who has defaulted on a loan that is discharged is no longer considered to be in default and is eligible to receive further Title IV aid. The holder of the loan is required to report the discharge of the loan to all credit bureaus to which the status of the loan was previously reported.

Program regulations that authorize the discharge of a loan made under both the Federal Direct Student Loan (Direct Loan) and Federal Family Education Loan (FFEL) Program have been in effect since July 1, 1995. The proposed regulations include closed school discharge provisions for the Federal Perkins Loan Program that are based largely on the regulations in existence for these programs.

The proposed regulations would authorize a closed school discharge by either the Secretary or the institution. This reflects the possibility that an institution may continue to hold a loan that is eligible for a closed school discharge due to the closure of a location or branch campus of the school, and not the closure of the school itself. However, in order to protect the borrower, the proposed regulations would require a school that denies a borrower's request for a closed school discharge to submit the materials that support such a determination for review and an independent determination of the dischargeability of the loan by the Secretary.

The proposed regulations would also allow the Secretary to discharge a loan based on a school closure without an application from the borrower. The Secretary may discharge a loan without an application if it were determined that the borrower qualified for and received a discharge on his or her FFEL or Direct Loan and was unable to secure a discharge on his or her Federal Perkins Loan only because the Secretary lacked the statutory authority. The proposed regulations would also authorize the Secretary to discharge a Federal Perkins Loan without an application from the borrower based on information in the Secretary's possession that qualified the borrower for a discharge.

Lastly, the proposed regulations contain a provision that would disallow a closed school discharge if the borrower secured his or her Federal Perkins Loan through fraudulent means as determined by the ruling of a court or an administrative tribunal. The negotiators agreed that the discharge of a fraudulently obtained loan would constitute an inappropriate use of federal tax dollars and compromise the integrity of the Federal Perkins Loan Program.

Section 674.34 Deferment of Repayment—Federal Perkins Loans, Direct Loans and Defense Loans

The proposed regulations would amend § 674.34, in accordance with changes made in the Amendments, to extend the deferment benefits described in this section to all borrowers with loans made before July 1, 1993, regardless of the terms of the borrower's promissory note. Current regulations authorize the deferments in this section only for an eligible borrower with a loan made on or after July 1, 1993. The extension of the deferments in this section to borrowers with a loan made before July 1, 1993, is effective October 7, 1998.

The proposed amendments to this section would also authorize a deferment for any borrower with a loan made under the program, including National Direct and Defense Loans, during any period in which the borrower is engaged in service that subsequently qualifies the borrower for cancellation of his or her loan. Prior to passage of the 1998 Amendments, if the borrower had a loan under the Federal Perkins Loan Program that was made before July 1, 1993, the borrower was eligible for a postponement of his or her repayment while doing service that qualified the borrower for cancellation. Because all borrowers are now eligible for a deferment in anticipation of cancellation, the postponement provisions in § 674.39 would be removed. Deferments in anticipation of cancellation authorized by this section may not be granted retroactively to cover any period of time prior to October 7, 1998.

Section 674.39 Loan rehabilitation

The 1998 Amendments authorize institutions that participate in the Federal Perkins Loan Program to establish a loan rehabilitation program for all defaulted Federal Perkins Loan borrowers. The proposed regulations in § 674.39 would define rehabilitation as the making of an on-time, monthly payment, as defined by the institution, each month for twelve consecutive months by the defaulted borrower. As specified in the 1998 Amendments, a borrower may rehabilitate a loan only once. The proposed regulations would require an institution to notify a defaulted borrower of the option and consequences of rehabilitating a defaulted loan. The consequences of rehabilitating a defaulted loan include returning the borrower to regular repayment status, treating the first payment made under the twelve consecutive payments as the first payment in a new ten-year repayment period, and instructing any credit bureau to which the default was reported to remove the default from the borrower's credit history.

The proposed regulations would limit collection costs that can be assessed a borrower on a rehabilitated loan to 24 percent. However, the proposed regulations would also allow an institution to charge any collection costs that exceed 24 percent on a rehabilitated loan, and that may not be passed along to the borrower, to their Federal Perkins Loan Revolving Fund until July 1, 2002. This would give institutions a chance to renegotiate contracts and service agreements with third-party collection agencies that currently provide for higher collection percentages.

There was much discussion among the negotiators regarding the limit on collection costs that can be charged to the borrower of a rehabilitated Federal Perkins loan. A proposal to limit the

collection costs that may be charged to a Federal Perkins Loan borrower on a rehabilitated loan to 18.5 percent, in order to be consistent with the FFEL and Federal Direct Loan Programs, did not receive the full support of the negotiators. Several negotiators noted that a Federal Perkins Loan borrower might have accrued collection costs in excess of 18.5 percent on a rehabilitated loan, and that institutions would have to cover the spread between an 18.5 percent cap and actual collection costs incurred. Several negotiators suggested that the competitive marketplace should determine the collection costs assessed to the borrower, not an arbitrary cap, and that collection agencies would not agree to contract with schools, especially small schools with low volume business, for such a low fee. However, other negotiators felt that borrowers faced with added marketplace collection costs of 30 to 40 percent when repaying a loan are pushed to the extreme financially. Also, several negotiators felt that, to the extent feasible, collection costs assessed on rehabilitated loans should be consistent across the Title IV loan programs. FFEL and Federal Direct Loan borrowers are not subject to further collection costs beyond the maximum 18.5 percent after rehabilitating their loan.

Several negotiators noted that in the FFEL and Federal Direct Loan programs, collection costs that are charged to a borrower are included in the ''new outstanding principal balance'' of the loan after it has been rehabilitated and returned to current status. That is, the collection costs of up to 18.5 percent are capitalized. This results in an actual higher charge to the borrower as he or she repays the new, higher balance, over time and with interest charged on the full amount. They noted that capitalizing an 18.5 percent collection cost on an FFEL or Federal Direct Loan is equal to assessing approximately a 24 percent fee on a Federal Perkins Loan, since collection costs are not capitalized in the Federal Perkins Loan Program. A proposal to limit the collection costs to 24 percent did not yield immediate consensus. However, negotiators reviewed data and confirmed that a capitalized 18.5 percent collection cost on an FFEL and Federal Direct Loan increases the balance of the loan, which in turn increases the amount of interest that accrues on that balance over the repayment of the loan. The difference in the borrower's monthly payment needed to cover both the collection cost and the interest accruing on an increased principal balance, yields an amount equal to 24 percent of the original principal and interest due on the loan after it has rehabilitated.

For example, on an FFEL or Federal Direct Loan with an outstanding balance of $1,000 after rehabilitation, capitalizing an 18.5 percent collection cost will add an additional $185.00 to the loan, yielding a new outstanding balance of $1,185.00. The borrower's payment will increase by $.46 per month over the life of the loan because of the added $185.00. Over 10 years, the borrower makes 120 payments. The extra $55.20 (120 monthly payments × $.46) added to the original $185.00 in collection costs that were added to the loan balance (capitalized) means that the borrower will repay $240.00 in collection costs over the life of the rehabilitated loan. Therefore, the negotiators felt that a cap of 24 percent on the collection costs that may be charged on a rehabilitated Federal Perkins Loan was comparable to the 18.5 percent cap on FFEL and Federal Direct Loans. They reached consensus on the 24 percent cap with the understanding that, as the example presented illustrates:

- No further collection costs are assessed the borrower. That is, payments are not treated on a ''fee on fee'' basis which is often used by collection agencies.
- The uncapitalized collection costs of 24 percent of the principal and interest due after the loan is rehabilitated is treated as a separate cost.
- The borrower's monthly payment reflects an amount that spreads the collection costs over the life of the loan.

Finally, the proposed regulations would return the benefits and privileges of the promissory note to the rehabilitated borrower as they applied prior to the borrower's default and authorizes institutions to offer flexible repayment options following the borrower's return to regular repayment status. This flexibility was noted in the regulation to assure schools that they can work with rehabilitated borrowers to establish realistic repayment plans in order to avoid a return to a default status.

Section 674.41 Due Diligence—General Requirements

The 1998 Amendments provide for the establishment of a Student Loan Ombudsman's office in order to provide timely assistance to borrowers with loans made under Title IV of the HEA. The 1998 Amendments also require that information about the availability and functions of the Ombudsman be made available to all borrowers in the Title IV student loan programs. The proposed regulations would amend § 674.41 to comply with this new requirement. The proposed regulations would require that institutions participating in the Federal Perkins Loan Program, as part of the general due diligence requirements, provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

Section 674.42 Contact With the Borrower

The 1998 Amendments modified section 486(b) of the HEA by eliminating the requirement that institutions conduct exit counseling individually or in groups and by encouraging institutions to use electronic means in providing personalized exit counseling. The proposed regulations in § 674.42 would facilitate these changes and make exit counseling requirements in the Federal Perkins Loan Program consistent with those in the Federal Direct Loan and the Federal Family Education Loan Programs.

Specifically, the proposed regulations would reorganize this section by first describing the disclosures that an institution is required to make to a Federal Perkins Loan borrower under section 463A(b) of the HEA, either as part of the promissory note or in another written statement provided to the borrower. The disclosure requirements have not changed. However, the proposed regulations would provide that the institution must make these disclosures either shortly before the borrower ceases at least half-time study at the institution, during the exit interview, or immediately by mail, if the borrower enters repayment without the institution's knowledge. As currently written, the regulations stipulate that the institution must make these disclosures during exit counseling.

The proposed regulations would require an institution to provide exit counseling to each borrower either in person, by audiovisual presentation, or by interactive electronic means before the student ceases at least half-time study. The proposed regulations would provide alternative written and electronic counseling options for borrowers engaged in study-abroad or correspondence study, and for borrowers who have left school without the institution's knowledge. In conducting exit counseling, the proposed regulations would require that an institution inform the borrower of the anticipated monthly repayment amount, review repayment options, suggest debt

management strategies, emphasize the seriousness of the repayment obligation and the consequences of default, review deferment and cancellation benefits of the loan, require the borrower to provide corrections to the institution's records, and review with the borrower information on the availability of the Student Loan Ombudsman's office. They would also propose that institutions that provide exit counseling by electronic means take reasonable steps to ensure that each borrower receives the counseling materials and actively participates in and completes the exit counseling. If, for example, a school sends counseling materials by electronic mail or other electronic means, not including the U.S. mail, the school must obtain documentation through return receipt or some other mechanism that the student received the materials and completed them.

Lastly, in order to facilitate the use of electronic exit counseling, the proposed regulations would eliminate the requirements that a school, as part of exit counseling, have the borrower sign a copy of the repayment schedule and provide a copy of the signed repayment schedule and the signed promissory note to the borrower. The institution would still have to provide the borrower with a copy of the borrower's repayment schedule and the promissory note as part of the disclosure requirements listed in § 674.42(a).

Section 674.45 Collection Procedures

The 1998 Amendments clarify an institution's credit bureau reporting responsibilities by requiring that a school promptly disclose changes to any information it has reported on a borrower's Federal Perkins Loan. As currently written, § 674.45 requires a school to report changes on a defaulted loan to the same credit bureau to which it originally reported the default. Section 674.45 also currently requires an institution to respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount. In order to prevent the borrower from suffering the negative consequences that may result from the existence of an inaccurate credit history, the proposed regulation amends the collection procedures in § 674.45 to require that an institution report changes to the account status of a defaulted loan to any national credit bureau to which it reported the default. The regulation also proposes, in accordance with provisions in the Fair Credit Reporting Act, that an institution be required to resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan. This would protect the borrower from the negative impact of a protracted resolution in disputes involving the accuracy of his or her credit history.

The 1998 Amendments require an institution to disseminate information regarding the Student Loan Ombudsman to borrowers who are unable to resolve a dispute over the terms of their loan with the loan holder. A new paragraph is proposed for § 674.45 that would require an institution, as part of the collection activities contained in this section, to provide the borrower with information on the availability of the Student Loan Ombudsman's office.

Section 674.47 Costs Chargeable to the Fund

The proposed regulations would amend § 674.47, in accordance with the loan rehabilitation provisions in § 674.39 of the proposed regulations. The proposed change would authorize an institution, until July 1, 2002, to charge its Fund for any collection costs assessed on a rehabilitated loan that are in excess of the 24 percent maximum limit that may be passed along to the borrower. This authority is necessary to give institutions time to renegotiate contracts with collection agencies if current contracts call for the assessment of collection fees in excess of 24 percent of outstanding principal, interest and late fees due on defaulted loans.

Section 674.49 Bankruptcy of Borrower

The proposed regulations would amend § 674.49 in order to reflect changes made to section 523(a)(8) of title 11 of the United States Bankruptcy Code by the Amendments. Effective October 8, 1998, the 1998 Amendments eliminated a borrower's ability to have a student loan automatically discharged due to bankruptcy if the loan has been in repayment for seven years or more. The proposed regulations would also clarify that the seven-year repayment period on bankruptcies filed before October 8, 1998, excludes any applicable suspension of the repayment period as defined by 34 CFR 682.402(m) of the Federal Family Education Loan Program regulations. Lastly, the proposed regulations would amend this section to require institutions to use due diligence and assert any defense consistent with its status under applicable law to avoid discharge of a Federal Perkins Loan in a bankruptcy proceeding.

Section 674.52 Cancellation Procedures

The proposed regulations would amend this section to clarify that a borrower whose defaulted loan has not been accelerated may qualify for any cancellation authorized by section 465 of the HEA and Subpart D of the Federal Perkins Loan Program regulations by complying with the requirements of this section. In current regulations, the wording in this paragraph erroneously states that borrowers whose defaulted loans have not been accelerated could qualify only for teaching, volunteer, or military service cancellations by complying with the requirements of this section.

The proposed regulations also would amend paragraph (d) of this section to clarify that a Federal Perkins loan, Direct loan or Defense loan borrower's deferment under § 674.34(c) runs concurrently with any period for which cancellation under §§ 674.53–674.60 is granted.

Section 674.53 Teacher cancellation—Federal Perkins, Direct and Defense Loans.

Effective October 7, 1998, the 1998 Amendments extended the Federal Perkins Loan Program cancellation benefits in section 465(a)(2) of the HEA to all borrowers with outstanding loan balances who perform qualifying service regardless of when the loans were made or any contrary provisions of the borrowers' promissory notes. Prior to the addition of this language to the HEA, the benefits were based upon when the loan was made and the provisions of the borrower's promissory note. The proposed regulations would amend § 674.53 to extend the following teaching cancellation benefits to all borrowers, regardless of when their loan was made or the terms of the borrower's promissory note:

- teaching in a low-income school,
- full-time teaching in special education, and
- full-time teaching in fields of expertise.

These teaching benefits would be extended to any borrower with an outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note. We would like to emphasize that cancellation benefits may not be granted retroactively for teaching service performed prior to October 7, 1998.

Section 674.56 Employment Cancellation—Federal Perkins Loan, Direct and Defense Loans

The 1998 Amendments amended the HEA to extend all cancellations in section 465(a)(2) to all borrowers with outstanding balances as of October 7, 1998. The proposed regulations would amend § 674.56 to extend the following cancellation benefits to all borrowers with an outstanding balance on Federal Perkins, Direct or Defense loans made before July 23, 1992, for employment in these areas on or after October 7, 1998, regardless of when their loan was made or the terms of the borrower's promissory note:

- full-time employment as a nurse or medical technician,
- full-time employment in a public or private nonprofit child or family service agency, and
- full-time employment as a qualified professional provider of early intervention services.

Only periods of qualifying service performed on or after October 7, 1998, are eligible for cancellation benefits if the borrower was not previously eligible due to the date the loan was made.

Section 674.57 Cancellation for Law Enforcement or Corrections Officer Service—Federal Perkins, Direct and Defense Loans

The proposed regulations would amend § 674.57 to extend the cancellation for full-time service as a law enforcement or corrections officer for an eligible employing agency to any borrower with an outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, in accordance with changes to the HEA by the Amendments. Cancellation benefits may not be granted retroactively for qualifying service performed before October 7, 1998.

Section 674.58 Cancellation for Service in a Head Start Program

The proposed regulations would amend § 674.58 to extend cancellation for service as a full-time staff member in a ''Head Start'' program to any borrower with an outstanding balance on a Defense loan for service performed on or after October 7, 1998, in accordance with changes made to the HEA by the Amendments. Federal Perkins and Direct loan borrowers have always been eligible for this cancellation and would not be affected by this regulatory change.

Section 674.60 Cancellation for Volunteer Service—Perkins Loans, Direct Loans and Defense Loans

The proposed regulations would amend § 674.60 to extend cancellation for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973, to any Direct loan borrower with a loan made on or after October 7, 1998, and any borrower with an outstanding balance on a Direct or Defense loan for service as a volunteer under the above Acts performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note, in accordance with the Amendments.

Executive Order 12866

1. *Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. There is a detailed discussion of the cost implications associated with the rehabilitation of a Federal Perkins Loan under the heading *Sec. 674.39 Loan rehabilitation* in the preamble of this NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subjected to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by the negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. *Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 674.41 *Due diligence—general requirements.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?
- Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The parties affected by these proposed regulations are institutions of higher education that participate in the Federal Perkins Loan Program, and individual Federal Perkins Loan borrowers. Federal Perkins Loan borrowers are not considered small entities under the Regulatory Flexibility Act. Institutions of higher education are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; and entities controlled by governmental entities with populations of 50,000 or less. Of the institutions of higher education that participate in the Federal Perkins Loan program, approximately 12 percent would be considered small entities under the definition. Those small institutions receive approximately three percent of new Federal Capital Contributions.

These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The proposed regulations would expand borrower benefits, and provide additional flexibility in the administration of the Federal Perkins Loan Program to both large and small institutions without requiring significant changes to current institutional system operations.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 674.6, 674.16, 674.31, 674.33, 674.34, 674.39, 674.41, 674.42, 674.45, 674.47, and 674.49 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Perkins Loan Program

Section 674.6 Default reduction plan. The Department currently has this section approved under OMB control number 1840–0535. The Amendments eliminated the requirement that institutions with a cohort default rate that equals or exceeds 15 percent submit a default reduction plan to the Secretary. Therefore, we are proposing to remove the required default reduction plan measures from the regulations. The total annual recordkeeping and reporting burden hours for § 674.6 equals 579 hours. The proposed regulation will therefore eliminate 579 hours from the 12,719 total recordkeeping and burden hours contained in the information collection requirements under OMB control number 1840–0535.

Section 674.16 Making and disbursing loans. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to clarify the credit bureau reporting requirements with which a school must comply when making and disbursing loans in accordance with the changes made to the HEA by the Amendments. Because credit bureau reporting is considered to be a normal business practice in the administration of the Federal Perkins Loan program, there is no additional burden associated with this section.

Section 674.31 Promissory Note. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to exclude any period during which a borrower who is a member of the reserve component of the Armed Forces is called or ordered to active duty for a period of more than 30 days from the borrower's initial grace period. This exclusion will be contained in the terms of the borrower's Federal Perkins Loan promissory note. Because institutional use of the Secretary's promissory note in the Federal Perkins Loan program is considered part of normal business practice in administering the Federal Perkins Loan program, there are no burden hours calculated for this section. We are also proposing to require an institution to disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information. Previously, the institution was required to report to ''any'' national credit bureau. This proposed change does not increase or decrease the frequency or amount of credit bureau reporting required by an institution. Additionally, credit bureau reporting is considered to be a normal business practice associated with the administration of the Federal Perkins Loan program and no burden hours are associated with this section.

Section 674.33 Repayment. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to authorize institutions to establish repayment incentives for borrowers by reducing by no more than 1 percent the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments; discounting by no more than 5 percent the balance owed on a loan which the borrower pays in full prior to the end of the repayment period; or, by offering any other incentive, with the Secretary's approval, that the institution determines will reduce defaults and replenish its revolving fund. The establishment of repayment incentives is not mandatory nor are institutions required to notify borrowers of the existence of repayment incentives. Institutions are currently required to retain a repayment history on each Federal Perkins Loan borrower that includes the frequency, timeliness, and number of repayments made by the borrower under the information collection requirements contained in § 674.19 and currently approved under OMB control number 1840–0073. Because institutions are already collecting the information needed to implement repayment incentives, there is no change to the information collection contained in this section.

We are also proposing a closed school discharge in this section for Federal Perkins Loan borrowers who did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed. This proposed change is retroactive to loans made on or after January 1, 1986. The proposed regulations would allow for a closed school discharge by an institution, as well as the Secretary. The proposed regulations would authorize the Secretary to discharge a loan based on a school closure without an application from the borrower if the borrower qualified for and received a discharge on his or her FFEL or Federal Direct Loan and was unable to secure a discharge on his or her Federal Perkins Loan only because the Secretary lacked the statutory authority. The proposed regulations would also authorize the Secretary to discharge a Federal Perkins Loan without an application from the borrower based on information in the Secretary's possession that qualifies the borrower for a discharge. The proposed regulations would also provide for an application process in the case of loans that the Secretary cannot discharge based on the above two criteria. Under the proposed regulations, the information the borrower is asked to provide in order to obtain the discharge of a debt based on the closure of a school is consistent with the information required under the application process currently in place for the FFEL and Federal Direct Loan programs. However, the application used in the FFEL and Federal Direct Loan Program does not currently apply to the discharge of loans made under the Federal Perkins Loan program. The current form will require revision or, alternately, a new form will be developed for the Federal Perkins Loan Program. Until such time as we are able to develop an application for borrowers seeking a closed school discharge of a Federal Perkins Loan, we cannot accurately project the number of burden hours contained in this section, although we expect the completion of such a form to be no more burdensome to applicants than the form used in the FFEL and Federal Direct Loan Programs. The burden hours associated with completing the closed school discharge form in the FFEL and Direct Loan Programs is currently 30 minutes or .5 hours per response.

Section 674.34 Deferment of repayment—Federal Perkins Loans, Direct Loans and Defense Loans. The Department currently has this section approved under OMB control number 1840–0535. We are proposing, in accordance with the Amendments, to extend the deferment benefits in this

section to borrowers who were formerly ineligible because of when their loans were made or the terms of their promissory notes. This change offers greater flexibility to both the borrower and the institution in defining the circumstances in which a deferment of repayment is appropriate. This proposed change does not affect the deferment process nor does it change the eligibility requirements with which a borrower must comply. Therefore, this provision would not add burden hours to the current information collection requirements associated with this section.

Section 674.39 Loan Rehabilitation. The Department currently has this section approved under OMB control number 1840–0535. We are proposing a new section that requires an institution to establish a loan rehabilitation program. A loan is considered rehabilitated when the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months. The institution must notify a defaulted borrower of the option and consequences of rehabilitating a loan under these proposed regulations. Once the loan is rehabilitated, the borrower is returned to regular repayment status, the first payment made under the 12 consecutive payments is treated as the first payment under a new 10-year repayment period and any adverse credit bureau history related to the default is removed from the borrower's credit report. Under § 674.16 and § 674.42 of current and proposed regulations, respectively, institutions are required to disclose to the borrower the definition of default and the consequences of defaulting on a Federal Perkins Loan, along with information on any cost that may be assessed to the borrower in the collection of the loan, including late charges and collection costs. The institution is required to provide this information in writing as part of the written application material, as part of the promissory note or on a separate written form before making and disbursing a Federal Perkins Loan to the borrower. The institution is again required to disclose information on the consequences of default to the borrower before he or she ceases at least half-time study at the institution, during the exit interview or immediately, in writing, if the borrower enters repayment without the institution's knowledge. There is ample opportunity for a school to disclose information to the borrower regarding the availability and consequences of loan rehabilitation when making the disclosures currently required under § 674.16 and § 674.42. Disclosures made under § 674.16 are considered part of normal business practice under OMB control number 1840–0535. Further calculation of burden hours under § 674.42 for providing notice of the option and consequences of rehabilitation would duplicate hours already calculated and cleared under OMB 1840–0535 that account for the disclosures that an institution is currently required to make that section. Because any burden associated with notifying a borrower of the option and consequences of rehabilitation is burden associated with or accounted for under other sections of the regulations, there are no new burden hours contained in this section.

Section 674.41 Due diligence—general requirements. The Department is adding this section as a new section approved under OMB control number 1840–0581. The proposed regulation would require institutions to provide a Federal Perkins Loan Program borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute. A total of 1,049,216 Federal Perkins Loan borrowers were in repayment as of June 30, 1998. The Department estimates that 5,246 (.5 percent) borrowers in repayment may require information on the availability of the Student Loan Ombudsman's office after failing to resolve a dispute regarding the terms of the loan with the institution. The Department further estimates that providing information on the availability of the Student Loan Ombudsman's office will average 5 minutes per response. The 437 hours and 10 minutes of burden associated with this section.

Section 674.42 Contact with the borrower. The Department currently has this section approved under OMB control number 1840–0581. The proposed regulation reorders the provisions in § 674.42 by moving the disclosure requirements with which an institution must comply under section 463A(b) of the HEA, either as part of the promissory note or in another written statement, to paragraph § 674.42(a). The disclosures have not changed. However, the proposed regulations give a school additional flexibility in the timing of the disclosures. Therefore, the information collection requirements remain unchanged for this section.

In accordance with the Amendments, this proposed change also authorizes an institution to use electronic means to facilitate exit counseling in the Federal Perkins Loan program. Previously, an institution was required to offer the borrower exit counseling in person or in groups. Exit counseling provisions are contained in § 674.42(b) of the proposed regulation. The proposed regulation provides consistency across the title IV, HEA loan programs in describing the disclosures that an institution is required to make during exit counseling. Because the authority to use electronic means in offering exit counseling does not change the nature of the information disseminated, there are no additional information collections that result from this change.

Lastly, in order to facilitate the use of electronic exit counseling, we are proposing regulations that would eliminate the requirement that a school, as part of exit counseling, have the borrower sign a copy of the repayment schedule and provide a copy of the signed repayment schedule and the signed promissory note to the borrower. However, because an institution must still provide the borrower with a copy of the borrower's repayment schedule and the promissory note as part of the disclosures required by § 674.42(a) of this section, the information collection burden contained in this section does not change.

Section 674.45 Collection procedures. The Department currently has this section approved under OMB control number 1840–0581. We are proposing to clarify that an institution must report any changes regarding a defaulted borrower to any national credit bureau to which it reported the default. The institution must also resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan. Institutions are currently reporting information to credit bureaus that reflect the recent changes made to the HEA by the Amendments. The Amendments merely codify standard business practice as it relates to credit bureau reporting. This provision does not change the information collection contained in this section. We are also proposing that as part of the collection activities provided for in this section, the institution provide the borrower with information on the availability of the Student Loan Ombudsman. The information collection contained in this section takes into account more intensive efforts an institution must make to recover amounts owed from defaulted borrowers. Information on the availability of the Student Loan Ombudsman is easily incorporated into the existing due diligence efforts required of institutions. Any further calculation of burden hours for this

requirement would duplicate hours already calculated and cleared under OMB 1840–0581.

Section 674.47 Costs chargeable to the Fund. The Department has this section approved under OMB control number 1840–0581. We are proposing to amend this section, in accordance with the loan rehabilitation provisions in § 674.39 of the proposed regulations. The proposed change would authorize an institution, until July 1, 2002, to charge its Fund for any collection costs assessed on a rehabilitated loan that are in excess of the maximum 24 percent limit that may be passed along to the borrower. This authority spares an institution any out-of-pocket expense that it may incur in complying with the terms of existing contracts with collection agencies that call for collection fees in excess of 24 percent. The proposed regulation would provide a transition period during which an institution could, in the normal course of business, renegotiate or renew existing contracts in order to accommodate the 24 percent limit on collection costs. The proposed regulations authorizing an institution to charge collection costs in excess of 24 percent to its Fund does not substantially change the information collection contained in this section.

Section 674.49 Bankruptcy of borrower. The Department currently has this section approved under OMB control number 1840–0581. We are proposing to amend this section in order to reflect changes made to the U.S. Bankruptcy Code that eliminate the automatic discharge of a student loan if the loan was in repayment for seven years or more. The fact that a federal student loan cannot be automatically discharged in a bankruptcy filing does not change the due diligence efforts required of an institution in collecting on a loan, defaulted or otherwise. The institution's collection responsibilities remain as a matter of normal business practice and the proposed regulations would not change the information collection contained in this section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: July 12, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend part 674 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, the following definition:

§ 674.2 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement: For purposes of regaining eligibility for grant, loan, or work assistance under Title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six (6) on-time, consecutive, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once on a defaulted loan.

* * * * *

3. Section 674.5 is amended as follows:

A. By revising paragraphs (a)(1) and (a)(2).

B. By removing paragraphs (a)(3) and (a)(4).

C. By removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

D. By removing paragraph (c)(4); and redesignating paragraph (c)(3)(ii) as paragraph (c)(4) and by removing ''; and'' at the end of the sentence in the new paragraph (c)(4) and adding, in its place, a period; and by revising paragraph (c)(3).

E. By removing paragraphs (e) and (f).

§ 674.5 Federal Perkins Loan Program cohort default rate and penalties.

(a) * * *

(1) *FCC reduction.* If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility.* For award year 2000–2001 and succeeding award years, an institution with a cohort default rate

that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures.*—(A) *Inaccurate calculation.* An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

(B) *Small number of borrowers entering repayment.* An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary.* The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio.* Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date.* The provisions of paragraph (a)(2) of this section are effective beginning with the cohort default rate calculated as of June 30, 2001.

* * * * *

(c) * * *

* * * * *

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school; or

(D) Repaid in full in accordance with § 674.33(e).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

* * * * *

674.6 [Removed and Reserved]

4. Section 674.6 is removed and reserved.

674.7 [Removed and Reserved]

5. Section 674.7 is removed and reserved.

6. Section 674.9 is amended by redesignating paragraph (i) as paragraph (j) and adding new paragraph (i) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(i) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For the purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment; and

(2) Voluntary payments do not include payments obtained by income tax offset, garnishment, income or asset execution or pursuant to a judgment.

* * * * *

7. Section 674.12 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student may borrow is—

(1) $4,000 for a student who is enrolled in a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and Direct Loans received by an eligible student may not exceed—

(1) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) $40,000 for a graduate or professional student; and

(3) $8,000 for any other student.

* * * * *

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

* * * * *

8. Section 674.16 is amended by revising paragraph (i) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(i)(1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

* * * * *

9. Section 674.31(b)(2)(i) is amended by redesignating paragraphs (C) and (D) as (D) and (E), respectively; by adding new paragraph (b)(2)(i)(C); and by revising paragraph (b)(10)(i) to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) For purposes of establishing the beginning of the repayment period for Direct or Perkins loans, the 6- and 9-

month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified above is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

* * * * *

(10) * * *

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

* * * * *

10. Section 674.33 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 674.33 Repayment.

* * * * *

(f) *Incentive repayment program.* (1) An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for interest lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraph (f)(1)(i) and (ii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge.* (1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) ''School'' means a school's main campus or any location or branch of the main campus; and

(C) The ''holder'' means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to be in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(i) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.213 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan, or

(ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means.

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary, in the case of a discharged loan held by the Secretary, in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.*

(i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by the school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(vii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(viii) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(ix) In the case of a loan held by an school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

* * * * *

11. Section 674.34 is amended by revising the section heading; and revising paragraphs (a) and (c) to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, Direct loans and Defense loans.

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, a Direct loan, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in this section.

* * * * *

(c) The borrower of a Federal Perkins loan, a Direct loan, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

* * * * *

12. Section 674.39 is revised to read as follows:

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest; and

(2) That exceed the amounts specified in paragraph (c)(1) of this section may be charged to an institution's Fund until July 1, 2002, in accordance with § 674.47(e)(5).

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains all of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

* * * * *

13. Section 674.41 is amended by adding a new paragraph (a)(3) to read as follows:

§ 674.41 Due diligence—general requirements.

(a) * * *

* * * * *

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

* * * * *

14. Section 674.42 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 674.42 Contact with the borrower.

(a) Disclosure of repayment information. The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge, the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information—

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) A copy of the borrower's signed promissory note.

(b) *Exit interview.* (1) An institution must conduct exit counseling with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must conduct this counseling shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (e.g. loan consolidation and refinancing);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(v) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation;

(vi) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school;

(vii) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan;

(viii) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer; and

(ix) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials set forth in appendix D to 34 CFR part 668.

(4) An institution that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(5) The institution must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

15. Section 674.45 is amended by revising paragraph (b) and adding a new paragraph (h) to read as follows:

§ 674.45 Collection procedures.

* * * * *

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

* * * * *

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

16. Section 674.47 is amended by redesignating paragraphs (e)(5) and (e)(6) as (e)(6), and (e)(7), respectively, and by adding new paragraph (e)(5) to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(e) * * *

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

* * * * *

17. Section 674.49 is amended as follows:

A. By redesignating paragraphs (f)(2)(ii)(A) and (f)(2)(ii)(B) as paragraphs (f)(2)(ii)(B) and (f)(2)(ii)(C), respectively; and adding a new paragraph (f)(2)(ii)(A).

B. By redesignating paragraphs (f)(3)(ii)(A) and (f)(3)(ii)(B) as paragraphs (f)(3)(ii)(B) and (f)(3)(ii)(C), respectively; and adding a new paragraph (f)(3)(ii)(A).

C. By revising paragraphs (c)(1), (c)(2) and (c)(3); paragraph (e)(4)(i); newly redesignated paragraphs (f)(2)(ii)(B) and (f)(3)(ii)(B); and paragraph (g).

§ 674.49 Bankruptcy of borrower.

* * * * *

(c) * * *

(1) The institution must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

* * * * *

(e) * * *

* * * * *

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a ''hardship discharge'' under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

* * * * *

(f) * * *

(2) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m)), and

(3) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m)) before the filing of the petition, and

* * * * *

(g) *Termination of collection and write-off.* (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

* * * * *

18. Section 674.52 is amended by revising paragraphs (c)(1) and (d) to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

* * * * *

(d) The Secretary considers a Perkins loan, Direct loan or Defense loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

* * * * *

19. Section 674.53 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively; by revising the heading of the section; by adding a new paragraph (a)(2); by revising paragraph (a)(1), paragraph (b), and paragraph (c) to read as follows:

§ 674.53 Teacher cancellation—Federal Perkins, Direct and Defense loans.

(a)(1) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.*

(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1995, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(b) *Cancellation for full-time teaching in special education.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

(c) *Cancellation for full-time teaching in fields of expertise.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

20. Section 674.56 is amended by revising the section heading and paragraphs (a), (b) and (c) to read as follows:

§ 674.56 Employment cancellation—Federal Perkins, Direct and Defense loans.

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individual with Disabilities Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

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21. Section 674.57 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively; by revising the section heading and paragraph (a)(1); and adding a new paragraph (a)(2) to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, Direct and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct Loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

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22. Section 674.58 is amended by revising paragraph (a) to read as follows:

§ 674.58 Cancellation for service in a Head Start Program.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Direct or Federal Perkins loan, for service as a full-time staff member in a ''Head Start'' program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a ''Head Start'' program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) The Head Start program in which the borrower serves must operate for a complete academic year, or its equivalent.

(4) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

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23. Section 674.60 is amended by revising the section heading and paragraph (a) to read as follows:

§ 674.60 Cancellation for volunteer service—Perkins loans, Direct loans and Defense loans.

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on a Direct or Defense loan for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under

this section are not included in the terms of the borrower's promissory note.

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