

Archived Information

Proposed Regulatory Language Committee I - Loans

Quick Fix: Yes

Origin: ED Proposed 12/14/2001

Issue: Perkins - Transfer of Fund

Regulatory Cite: 674.17

Summary of Change: The proposed change to §674.17 would clarify the existing requirement of assignment of Perkins Loans to the Department when an institution transfers its fund to the Department when it withdraws from the Federal Perkins Loan. This change deletes the references in the regulations to schools assigning their loans to other institutions.

Change:

§674.17 Federal Interest in allocated funds - transfer of Fund.

(a) If an institution responsible for a Federal Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take ~~one or more of~~ the following steps to protect the outstanding loans and the Federal interest in that Fund:

(1) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

~~(2) The transfer of the outstanding loans to another institution.~~

~~(3)~~ The transfer-assignment of the outstanding loans to the Department of Education.

(b) An institution that ~~transfers~~assigns outstanding loans under this paragraph relinquishes its interest in those loans.

~~(c) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.~~

~~(d) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of --~~

~~(1) The offering institution's demonstrated loan collection capability; and~~

~~(2) The number of students of the transferor institution expected to enroll in the offering institution.~~

~~(e) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is~~

~~performed on the operation of the transferor institution's
program.~~

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**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: Fed Up - Additional Agenda Item

Issue: Perkins - Coordinating Multiple Monthly Payments for Perkins Loans

Regulatory Cite: 674.33(b)(2) & 674.42(a)(11)

Summary of Change: When an institution requires a borrower to pay a minimum monthly repayment, it is difficult for institutions to coordinate the minimum monthly repayment with other institutions unless notified by the borrower. The revisions require an institution to coordinate minimum monthly repayments only at the request of a borrower. In addition, the revisions require an institution to notify the borrower that the borrower must initiate a request to coordinate minimum monthly payments among institutions.

Change:

§674.33 Repayment.

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(b)***

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and NDSL or Federal Perkins loans from one or more institutions. If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, and ~~if~~ if the total monthly repayment is less than \$30 and the monthly repayment on a Defense loan is less than \$15 a month, the amount attributed to the Defense loan may not exceed \$15 a month.*

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§674.42 Contact with the borrower.

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(a)(11)An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the

institution if he or she wants the minimum monthly payment
determination to be based on payments due to other institutions.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: ED Proposed 12/14/2001

Issue: Perkins - Economic Hardship for Borrowers

Regulatory Cite: 674.34(e)(10)

Summary of Change: Many borrowers repay their Perkins Loans in less than 10 years. The proposed change allows schools to base economic hardship deferment calculations on a borrower's actual repayment schedule, rather than a 10-year repayment schedule.

Change:

§674.34 Deferment of repayment - Federal Perkins loans, NDSLs and Defense loans.

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(e) ***

(10) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e) (5) of this section, the institution shall count ~~only~~ the monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been owed on a Federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment. ., regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment.

(11) If the Federal Perkins loan had been scheduled to be repaid in less than 10 years from the date the borrower entered repayment, the institution shall use the actual repayment schedule and the actual monthly payment amount in determining the borrower's eligibility for an economic hardship deferment under paragraph (e)(5).

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes
Origin: Fed Up #13
Issue: Perkins - Promissory Notes
Regulatory Cite: 674.42(a)(10)

Summary of Change: Revise the current regulations to require an institution to provide only, as part of its repayment information or during the exit interview, contact information that allows the borrower to request a copy of the borrower's signed promissory note.

Change:

§674.42 Contact with the borrower.

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(a)(10) The contact information of a party who will provide the borrower Aa copy of the borrower's his or her signed promissory note.

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**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: Fed Up #21

Issue: Perkins - Credit Bureau Reporting

Regulatory Cite: 674.45(a)(1)

Summary of Change: The proposed change to §674.45(a)(i) would clarify when a borrower's default status is to be reported to at least one national credit bureau.

Change:

§674.45 Collection procedures.

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(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in §674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with §674.43(f), the institution shall --

(1) Report the account as being in default~~defaulted account~~ to any one national credit bureau; and

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: ED Proposed 12/14/2001

Issue: Perkins - Assignment of Cancelled Loans

Regulatory Cite: 674.50(e)(4)

Summary of Change: Revisions are made to the assignment regulations to conform to the assignment requirements for loans that have been approved preliminarily for a disability discharge on or after July 1, 2002 and have been assigned to the Department [see § 674.61(b)(3)].

Change:

§674.50 Assignment of defaulted loans to the United States.

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(e) The Secretary does not accept assignment of a loan if --

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~~(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.~~

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**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: ED Proposed 12/14/2001

Issue: Perkins - Reimbursement to the Fund

Regulatory Cite: 674.50(g)(2)

Summary of Change: The proposed changed to §674.50(g)(2) would make it optional for the Secretary to require an institution to reimburse the Fund if an assigned loan is unenforceable because of an act or omission by the school (see §674.13(a)). This proposed change conforms to an earlier change made in §674.13.

Change:

§674.50 Assignment of defaulted loans to the United States.

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(g)***

(2) The Secretary may require the institution ~~shall to~~ reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

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**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: FED UP #4

Issue: FFEL - Eligible Lender

Regulatory Cite: 682.200(b)

Summary of Change: Revises the definition of lender to provide that loans held in trust are not considered part of the trustee lender's consumer credit function in determining whether the lender has exceeded the limit of one-half of the lender's combined consumer credit portfolio in the regulations. This provision is intended to clarify that loans held in trust by a lender are not considered part of the trustee lender's consumer credit function but are considered part of the beneficial holder's consumer credit function.

Change:

§682.200 Definitions.

(b) * * *

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)-(5) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, or a credit union --

(i) The phrase "subject to examination and supervision" in section 435(d) of the Act means "subject to examination and supervision in its capacity as a lender";

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under

this part" in section 435(d) of the Act means that the lender does not, or in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not at any time, hold FFEL Program loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages held by the lender or its subsidiaries. For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: FED UP #25

Issue: FFEL - First Payment Due Date

Regulatory Cite: 682.209(a)(3)

Summary of Change: Amends the regulations to allow up to 60 days for the due date of a borrower's first payment of a Stafford loan or the resumption of payments on a Stafford loan following a deferment or forbearance. The first payment due date is already up to 60 days for all loan programs except Stafford.

Change:

§682.209 Repayment of a loan.

(a) * * *

(3) * * *

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than --

(A) 4560 days following the first day that the repayment period begins;

(B) 4560 days from the expiration of a deferment or forbearance period unless the borrower during this period has submitted payments with instructions that those payments are intended for future installment payments;

(C) 4560 days following the end of the post deferment grace period;

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: FED UP #27

Issue: FFEL - Borrower Repayment Terms

Regulatory Cite: 682.209(a)(8)(iv)

Summary of Change: Removes the "written notice" requirement for the borrower to request the lender to extend the repayment period to a minimum of 5 years in cases where the borrower had previously requested a repayment period of less than 5 years.

Change:

§682.209 Repayment of a loan.

(a) * * *

(8) * * *

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than 5 years. Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request ~~may, by written notice to~~ may notify the lender at any time ~~during the repayment period, to~~ extend the repayment period to a minimum of 5 years.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: ED - Additional Agenda Item

Issue: FFEL - Sovereign Immunity - Proofs of Claim

Regulatory Cite: 682.402(f)(4)

Summary of Change: The proposed changes clarify that State guaranty agencies that hold FFEL loans, may oppose the discharge of HEA student loans in bankruptcy by asserting that bankruptcy law does not supersede the State's immunity under the 11th Amendment to the Constitution from suit in Federal court. The proposed changes will ensure that no Department regulation would require a State agency that wished to oppose discharge by asserting sovereign immunity to take any action that would hinder or frustrate that intention. In addition, these changes are also designed to avoid future arguments that a State guarantor concedes the jurisdiction of the court if it accepts assignment of a proof of claim filed by a lender. The changes allow a State guarantor that intends to assert sovereign immunity to direct lenders under its guaranty program not to file a proof of claim. These changes are consistent with recent regulations promulgated for state institutions in the Federal Perkins Program.

Change:

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

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(f) *Bankruptcy-*

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(4) *Proof of claim.* (i) Except as provided in (ii), Unless instructed otherwise by the guaranty agency, †The lender holder of the loan shall file a proof of claim with the bankruptcy court within -

~~(i)-(A)~~ 30 days after the lender holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

~~(ii)-(B)~~ 30 days after the lender holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a State guaranty agency, and on that basis can assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency-

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes

Origin: FED UP #54

Issue: FFEL - Copies of Promissory Notes

Regulatory Cite: §682.402(g)(1)(i)

Summary of Change: Removes the requirement that a lender must "certify" that a note is a "true and exact" copy as part of its claim submission. This change conforms to prior technical changes and also now reflects the new unpaid refund claims submission process.

Change:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

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(g) *Claim procedures for a loan held by a lender -- (1)*

Documentation. A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, unpaid refund, or bankruptcy claim:

(i) The original or true and exact copy of the promissory note. ~~or a copy of the promissory note certified by the lender as true and exact.~~

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes
Origin: 1/7/02 Suggestion
Issue: DL - Definition of Default
Regulatory Cite: §668.183(c)(1)(iii)

Summary of Change: The proposed change would eliminate the requirement that certain borrowers under the Direct Loan Program's income contingent repayment plan must be included as a defaulted loan in the calculation of a non-degree-granting proprietary institution's FFEL/DL cohort default rate.

Change:

§668.183 Calculating and applying cohort default rates

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(c)(1) ***

(ii) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998); or

~~(iii) You are a proprietary, non-degree-granting institution, and before the end of the following fiscal year, the borrower~~

~~has been in repayment for 360 days, under the Direct Loan Programs' income contingent repayment plan, on a loan used to include the borrower in your cohort (or that repaid a loan that was used to include the borrower in your cohort), with scheduled payments that are less than 15 dollars per month and are less than the amount of interest accruing on the loan; or~~

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§668.193 Loan servicing appeals.

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(d)*Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

~~However, for the purposes of this paragraph, the data manager does not identify a borrower as defaulted due to repayment under the Direct Loan Program's income contingent repayment plan, under §668.183(c)(1)(iii).~~

(f)*Determination.*

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~~(3) Our recalculation of your cohort default rate does not affect the number of borrowers who are considered to be in default due to payments made under the Direct Loan Program's~~

~~income contingent repayment plan, under the criteria in
§668.183(c)(1)(iii).~~

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: Yes
Origin: ED - Additional Agenda Item
Issue: DL - Master Promissory Note
Regulatory Cite: §685.102(b)

Summary of Change: Under current regulations, the expiration of a Direct Loan Master Promissory Note (MPN) is based on the date of the first anticipated disbursement. Common Origination and Disbursement (COD) provides an opportunity to make the Direct Loan MPN expiration date provisions more consistent with the corresponding FFEL provisions. The proposed changes to the definition of MPN in §685.102(b) would base the expiration date of a Direct Loan MPN on the date the MPN is signed by the borrower or the date the Secretary receives the MPN.

Change:

§685.102 Definitions.

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(b) ***

Master promissory note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003,
loans for multiple academic years may no longer be made under an MPN after the earliest of--

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of--

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

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