
This content is from the eCFR and is authoritative but unofficial.

Title 34 – Education

Subtitle B – Regulations of the Offices of the Department of Education

Chapter VI – Office of Postsecondary Education, Department of Education

Part 674 – Federal Perkins Loan Program

Subpart B – Terms of Loans

Source: 52 FR 45754, Dec. 1, 1987, unless otherwise noted.

Authority: 20 U.S.C. 1070g, 1087aa-1087hh; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

Editorial Note: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

§ 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, except for loans for which a judgment has been secured or loans obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance. 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—
 - (i) Requests rehabilitation; and
 - (ii) Makes a full monthly payment—as determined by the institution—within 20 days of the due date, each month for 9 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 nine 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 as of the date following application of the twelfth payment;
 - (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); and
 - (3) Are not restricted to 24 percent in the event the borrower defaults on the rehabilitated loan.

- (d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains the balance 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.

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Title 34 — Education

Subtitle B — Regulations of the Offices of the Department of Education

Chapter VI — Office of Postsecondary Education, Department of Education

Part 674 — Federal Perkins Loan Program

Subpart C — Due Diligence

Source: 52 FR 45555, Nov. 30, 1987, unless otherwise noted.

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Editorial Note: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

§ 674.41 Due diligence—general requirements.

- (a) **General.** Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—
- (1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and
 - (2) Respond promptly to all inquiries from the borrower.
 - (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.
- (b) **Coordination of information.** An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—
- (1) The enrollment status of the borrower;
 - (2) The expected graduation or termination date of the borrower;
 - (3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and
 - (4) The current name, address, telephone number and Social Security number of the borrower.

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(Authority: 20 U.S.C. 424, 1087cc)

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Part 674 – Federal Perkins Loan Program

Subpart C – Due Diligence

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§ 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) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

- (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.

(b) *Exit counseling.*

- (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted 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 institution approves for credit, the borrower may be provided with written counseling material by mail within 30 days after the borrower completes the program. If a borrower withdraws from the institution without the institution's prior knowledge or fails to complete an exit counseling session as required, the institution must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from the institution or failed to complete exit counseling as required.
- (2) The exit counseling 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 the institution or in the borrower's program of study;
 - (ii) Explain to the borrower the options to prepay each loan and pay each loan on a shorter schedule;
 - (iii) Review for the borrower the option to consolidate a Federal Perkins Loan, including the consequences of consolidating a Perkins Loan. Information on the consequences of loan consolidation must include, at a minimum—
 - (A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;
 - (B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;
 - (C) The options of the borrower to prepay the loan or to change repayment plans; and
 - (D) That borrower benefit programs may vary among different lenders;
 - (iv) Include debt-management strategies that are designed to facilitate repayment;
 - (v) Explain the use of a Master Promissory Note;
 - (vi) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;
 - (vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

- (viii) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, has not completed the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or did not receive educational or other services that the borrower purchased from the institution;
 - (ix) Provide—
 - (A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and
 - (B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;
 - (x) Require the borrower to provide current information 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;
 - (xi) Review for the borrower information on the availability of the Student Loan Ombudsman's office;
 - (xii) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information; and
 - (xiii) A general description of the types of tax benefits that may be available to borrowers.
- (3) If exit counseling is conducted through interactive electronic means, the institution must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.
- (4) The institution must maintain documentation substantiating the institution's compliance with this section for each borrower.

(c) *Contact with the borrower during the initial and post deferment grace periods.*

(1)

- (i) For loans with a nine-month initial grace period (NDSLs made before October 1, 1980 and Federal Perkins loans), the institution shall contact the borrower three times within the initial grace period.
- (ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)

- (i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

- (A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.
- (B) The date and amount of the next required payment.
- (ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.
- (iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

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(Authority: U.S.C. 424, 1087cc, 1087cc-1)

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Title 34 – Education

Subtitle B – Regulations of the Offices of the Department of Education

Chapter VI – Office of Postsecondary Education, Department of Education

Part 674 – Federal Perkins Loan Program

Subpart C – Due Diligence

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Editorial Note: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

§ 674.43 Billing procedures.

- (a) The term *billing procedures*, as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:
- (1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.
 - (2) If the institution does not use a coupon system, it shall send to the borrower—
 - (i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and
 - (ii) A statement of account at least 15 days before the due date of each subsequent payment.
 - (3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.
- (b)
- (1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—
 - (i) A payment;
 - (ii) A request for deferment; or
 - (iii) A request for postponement or for cancellation.
 - (2) Subject to § 674.47(a), the institution may assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—
 - (i) Any part of an installment payment not made when due, or
 - (ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

- (3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—
 - (i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or
 - (ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.
- (4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.
- (5) The institution—
 - (i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with § 674.31(b)(5) (See appendix E); and
 - (ii) May assess this charge only during the period described in paragraph (b)(2) of this section.
- (6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—
 - (i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or
 - (ii) Demands payment for that amount in full no later than the due date of the next installment.
- (c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:
 - (1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.
 - (2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.
- (d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—
 - (1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or
 - (2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.
- (e)
 - (1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

- (i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and
 - (ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.
- (2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.
- (f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.
- (g)
- (1) An institution shall ensure that any funds collected as a result of billing the borrower are—
- (i) Deposited in interest-bearing bank accounts that are—
 - (A) Insured by an agency of the Federal Government; or
 - (B) Secured by collateral of reasonably equivalent value; or
 - (ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.
- (2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 424, 1087cc)

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Chapter VI – Office of Postsecondary Education, Department of Education

Part 674 – Federal Perkins Loan Program

Subpart C – Due Diligence

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§ 674.45 Collection procedures.

- (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 to any one national credit bureau; and
 - (2)
 - (i) Use its own personnel to collect the amount due; or
 - (ii) Engage a collection firm to collect the account.
- (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.
- (c)
- (1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—
 - (i) Litigate in accordance with the procedures in § 674.46;
 - (ii) Make a second effort to collect the account as follows:
 - (A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.
 - (B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

- (iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in § 674.50.
- (2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.
- (d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—
 - (1) The loan is recovered through litigation;
 - (2) The account is assigned to the United States; or
 - (3) The account is written off under § 674.47(g).
- (e)
 - (1) Subject to § 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.
 - (2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§ 674.44, 674.46, 674.48, and 674.49, based on either—
 - (i) Actual costs incurred for these actions with regard to the individual borrower's loan; or
 - (ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.
 - (3) For loans placed with a collection firm on or after July 1, 2008, reasonable collection costs charged to the borrower may not exceed—
 - (i) For first collection efforts, 30 percent of the amount of principal, interest, and late charges collected;
 - (ii) For second and subsequent collection efforts, 40 percent of the amount of principal, interest, and late charges collected; and
 - (iii) For collection efforts resulting from litigation, 40 percent of the amount of principal, interest, and late charges collected plus court costs.
 - (4) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.
- (f)
 - (1) An institution shall ensure that any funds collected from the borrower are—
 - (i) Deposited in interest-bearing bank accounts that are—
 - (A) Insured by an agency of the Federal Government; or
 - (B) Secured by collateral of reasonably equivalent value; or
 - (ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(g) **Preemption of State law.** The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(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.

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§ 674.47 Costs chargeable to the Fund.

(a) **General: Billing costs.**

- (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.
- (2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to § 674.43 to demand payment of overdue amounts on the loan.

(b) **General: Collection costs.**

- (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with §§ 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to §§ 674.44, 674.45, 674.46, 674.48 and 674.49.
- (2) If the amount recovered from the borrower does not suffice to pay the amount on the past-due payments late charges, and these collection costs, the institution may charge and Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) **Waiver: Late charges.** The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) **Waiver: collection costs.** Before filing suit on a loan, the institution may waive collection costs as follows:

- (1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.
- (2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) **Limitations on costs charged to the Fund.** The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower:

- (1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

- (2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).
- (3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.
- (4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charges collected.
- (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.
- (6) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—
 - (i) Court costs specified in 28 U.S.C. 1920;
 - (ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;
 - (iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and
 - (iv) 40 percent of the total amount recovered from the borrower in any other proceeding.
- (7) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.
- (f) **Records.** For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in § 674.19.
- (g) **Cessation of collection activity of defaulted accounts.** An institution may cease collection activity on a defaulted account with a balance of less than \$200, including outstanding principal, accrued interest, collection costs, and late charges, if—
 - (1) The institution has carried out the due diligence procedures described in subpart C of this part with regard to this account; and
 - (2) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.
- (h) **Write-offs of accounts.**
 - (1) Notwithstanding any other provision of this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—
 - (i) Less than \$25; or

- (ii) Less than \$50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with § 674.43(a).
- (2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.
- (3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

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This content is from the eCFR and is authoritative but unofficial.

Title 34 – Education

Subtitle B – Regulations of the Offices of the Department of Education

Chapter VI – Office of Postsecondary Education, Department of Education

Part 674 – Federal Perkins Loan Program

Subpart C – Due Diligence

Source: 52 FR 45555, Nov. 30, 1987, unless otherwise noted.

Authority: 20 U.S.C. 1070g, 1087aa-1087hh; Pub. L. 111-256, 124 Stat. 2643; unless otherwise noted.

Editorial Note: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

§ 674.48 Use of contractors to perform billing and collection or other program activities.

- (a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.
- (b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.
- (c) If an institution uses a billing service to carry out billing procedures under § 674.43, the institution shall ensure that the service—
 - (1) Provides at least quarterly, a statement to the institution which shows—
 - (i) Its activities with regard to each borrower;
 - (ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and
 - (iii) Amounts collected from the borrower;
 - (2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;
 - (3) Does not deduct its fees from the amount it receives from borrowers;
 - (4)
 - (i) Instructs the borrower to remit payment directly to the institution;
 - (ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or
 - (iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and
 - (5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

- (d) If the institution uses a collection firm, the institution shall ensure that the firm—
- (1)
 - (i) Instructs the borrower to remit payment directly to the institution;
 - (ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or
 - (iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and
 - (2) Provides at least quarterly, a statement to the institution which shows—
 - (i) Its activities with regard to each borrower;
 - (ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;
 - (iii) Amounts collected from the borrower; and
 - (3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.
- (e) If an institution uses a billing service to carry out § 674.43 (billing procedures), it may not use a collection firm that—
- (1) Owns or controls the billing service;
 - (2) Is owned or controlled by the billing service; or
 - (3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.
- (f)
- (1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.
 - (2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.
 - (3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—
 - (i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than \$100,000, the party is bonded or insured in an amount equal to the lesser of—
 - (A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or
 - (B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

Use of contractors to perform billing and collection or other program...

- (ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than \$100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—
 - (A) Naming the institution as beneficiary; and
 - (B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.
- (4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

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Editorial Note: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

§ 674.49 Bankruptcy of borrower.

- (a) **General.** If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.
- (b) **Proof of claim.** The institution must file a proof of claim in the bankruptcy proceeding unless—
 - (1) In the case of a proceeding under chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets, or
 - (2) In the case of a bankruptcy proceeding under either Chapter 7 or Chapter 13 of the Bankruptcy Code in which the repayment plan proposes that the borrower repay less than the full amount owed on the loan, the institution has an authoritative determination by an appropriate State official that in the opinion of the State official, the institution is an agency of the State and is, on that basis, under applicable State law, immune from suit.
- (c) **Borrower's request for determination of dischargeability.**
 - (1) The institution must use due 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.

- (4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.
 - (5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—
 - (i) Oppose the borrower's request for a determination of dischargeability; and
 - (ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.
 - (6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.
- (d) **Request for determination of non-dischargeability.** The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.
- (e) **Chapter 13 repayment plan.**
- (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.
 - (2) The institution is not required to respond to a proposed repayment plan, if—
 - (i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or
 - (ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.
 - (3)
 - (i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—
 - (A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;
 - (B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and
 - (C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.
 - (ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—
 - (A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and
 - (B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(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—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) **Resumption of collection from the borrower.** The institution shall resume billing and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(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

(C) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(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

(C) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

(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.

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