

DEPARTMENT OF EDUCATION**34 CFR Parts 674 and 682****Federal Perkins Loan Program and Federal Family Education Loan Program**

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan and Federal Family Education Loan (FFEL) program regulations by adding criteria that allow Peace Corps volunteers who are ineligible for deferment or cancellation of their federal student loans based solely on Peace Corps service to automatically qualify for economic hardship deferments while they are serving in the Peace Corps. This change also applies to the William D. Ford Federal Direct Loan (Direct Loan) Program in accordance with § 685.204(b)(3) of the Direct Loan Program regulations, which references the standards set forth in § 682.210(s) of the FFEL Program regulations in establishing a Direct Loan borrower's eligibility for an economic hardship deferment.

The Secretary also amends the Federal Perkins Loan Program regulations to eliminate the provision that requires a borrower to submit a request for a loan deferment, including a deferment in anticipation of cancellation, in writing.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, that institutions that participate in the Federal Perkins Loan Program and lenders and guaranty agencies that participate in the FFEL Programs may, at their discretion, choose to implement the provisions of §§ 674.34, 674.38, and 682.210 as amended by these final regulations, on or after October 25, 1999. For further information see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On September 17, 1998, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Perkins Loan Program and FFEL Program regulations in the **Federal Register** (63 FR 49798).

The NPRM included a discussion of the issues surrounding the proposed changes that are not repeated here. The following changes were proposed:

Amending §§ 674.34(e)(2) and 682.210(s)(6)(ii) to add criteria that allow borrowers to qualify automatically for economic hardship deferments while they are serving in the Peace Corps.

Amending §§ 674.38(d) and 682.210(s)(6) to allow borrowers to receive economic hardship deferments for longer than a one-year period for each request while serving as Peace Corps volunteers.

Amending § 674.38(a) to eliminate the requirement that a borrower must submit a deferment or postponement request in writing.

Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

Sections 674.34, 674.38 and 682.210—In Dear Colleague letter GEN-98-16, the Secretary provided interim procedures to be used by FFEL loan holders and postsecondary institutions in granting economic hardship deferments to Peace Corps volunteers

until final regulations were published. Institutions that participate in the Federal Perkins Loans Program and guaranty agencies and lenders that participate in the FFEL program may, now at their discretion, choose to implement the provisions of §§ 674.34, and 682.210 upon October 25, 1999. Institutions that participate in the Federal Perkins Loan Program may implement the provisions of § 674.38 that eliminate the written request for a deferment in the Perkins Loan Program upon October 25, 1999.

These final regulations contain changes from the NPRM that are explained in the Analysis of Comments and Changes that follows.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 10 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

General

Comments: All of the commenters who addressed the Secretary's proposal to simplify the economic hardship deferment application process for certain Peace Corps volunteers supported the proposed changes.

Discussion: The Secretary appreciates the commenters' support for the proposed changes and believes they will encourage and support Peace Corps service.

Changes: None.

Sections 674.34 and 682.210 Deferment

Comments: Several commenters noted that the proposed placement of the new provision in §§ 674.34(e)(2) and 682.210(s)(6)(ii) appears to require a borrower to provide evidence that he or she is receiving payment from the Peace Corps rather than indicating clearly that the information required to establish a borrower's eligibility for the deferment is documentation from the Peace Corps that the borrower is serving (or will serve) as a Peace Corps volunteer. The commenters suggested that the regulatory language be revised to indicate that a borrower must provide documentation showing that he or she

is serving or has agreed to serve as a Peace Corps volunteer.

Discussion: In the preamble to the NPRM and in Dear Colleague letter GEN 98-16, we indicated that evidence of a borrower's eligibility for an economic hardship deferment under the new provision is provided by documentation from the Peace Corps showing that the borrower will be or is serving as a Peace Corps volunteer. It was not our intent to require a borrower to provide documentation that he or she is actually receiving payments from the Peace Corps. However, we agree with the commenters that the regulatory language proposed in the NPRM could be misinterpreted.

Changes: The paragraph establishing Peace Corps service as a criterion for receipt of an economic hardship deferment has been removed from §§ 674.34(e)(2) and 682.210(s)(6)(ii) and made a separate paragraph in each part that clarifies that the borrower is not required to provide evidence of receiving payment from the Peace Corps to establish eligibility for the economic hardship deferment.

Comments: Several commenters felt that the proposed language amending Sections 674.34(e) and 682.210(s)(6) did not define clearly the intended deferment period as the borrower's term of service in the Peace Corps, not to exceed the statutory maximum of three years. The commenters noted that the proposed language stated only that an economic hardship deferment under the new provision for Peace Corps volunteers may be granted for longer than one year at a time. The commenters suggested that the regulatory language be revised to indicate that the deferment period covers a borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility, not to exceed the three-year statutory maximum.

Discussion: As discussed in the preamble to the NPRM and in Dear Colleague letter GEN-98-16, the deferment period for an economic hardship deferment granted to Peace Corps volunteers under the new provision is intended to be for the borrower's full term of service, up to the statutory maximum of three years. We agree with the commenters that the regulatory language proposed in the NPRM may not convey clearly the intended deferment period.

Changes: Sections 674.34(e) and 682.210(s)(6) have been revised to clarify that the period of an economic hardship deferment under the new provision is the lesser of the borrower's full term of service in the Peace Corps

or the borrower's remaining period of economic hardship deferment eligibility under the statutory three-year maximum.

Comments: Several commenters expressed concern that the Peace Corps certification form the borrower receives from the Peace Corps at pre-service orientation sessions, and that certifies that the borrower will be serving as a Peace Corps volunteer, does not include the borrower's dates of service. The commenters believe that without information on the beginning and ending dates of the borrower's service, they will not have sufficient documentation to process an economic hardship deferment for the appropriate period of time. The commenters suggested that the Peace Corps certification document that was attached to Dear Colleague letter GEN-98-16 be revised to include the beginning and ending dates of the borrower's service to make the form consistent with the regulatory changes proposed in the NPRM.

Discussion: We agree that the documentation the Peace Corps supplies to the borrower supporting the borrower's request for deferment should include the beginning and ending dates of the borrower's Peace Corps service. We also believe that the Peace Corps certification form, which was originally developed to support only a borrower's request for the categorical Peace Corps deferment, should be revised to support both borrowers who apply for the categorical deferment and those that apply for an economic hardship deferment based on Peace Corps service.

Changes: The Peace Corps certification form has been revised to include the borrower's dates of service and to make it suitable for use as supporting documentation of Peace Corps service for both categories of borrowers serving in the Peace Corps.

Comments: Two commenters noted that the proposed regulations would permit borrowers to receive economic hardship deferments for their full term of service in the Peace Corps without having to reapply each year. These commenters expressed concern about the potential for fraud by borrowers who do not complete their term of service and felt that a system should be established to notify loan holders of a borrower's continuation in or termination from Peace Corps service. One of the commenters recommended that loan holders receive verification of a borrower's continued service in the Peace Corps annually before authorizing an extension of the borrower's deferment. The other commenter was concerned particularly about potential

for fraud by borrowers who are eligible for loan cancellation in the Federal Perkins Loan Program based on their service as Peace Corps volunteers, and believed that borrowers should continue to be required to provide documentation of both the beginning and termination dates of their service.

Discussion: We appreciate the commenters' concerns regarding fraud in the case of borrowers who terminate their Peace Corps service early. However, we believe that requiring borrowers who receive economic hardship deferments based on their Peace Corps service to provide documentation annually to their loan holders essentially eliminates one of major benefits provided by the proposal to Peace Corps volunteers. Borrowers are clearly told, both on the deferment request forms used in the FFEL and Direct Loan programs and on the revised Peace Corps service certification form, that they must immediately notify their loan holders if they leave the Peace Corps before the projected termination date shown on their Peace Corps certification form. The new economic hardship deferment provisions for Peace Corps volunteers do not change this borrower responsibility.

We did not propose to eliminate the requirement that the loan holder make an annual determination of a borrower's eligibility for a categorical Peace Corps deferment in the FFEL and the Federal Direct Loan Programs, or for a deferment or cancellation, or both, based on Peace Corps service in the Federal Perkins Loan Program. We believe, however, that the same benefits of a less burdensome deferment and cancellation application process should be extended to all Peace Corps volunteers.

Changes: Sections 674.38(d) and 682.210(k) are amended to authorize a loan holder to grant a categorical deferment, including a deferment in anticipation of cancellation in the Federal Perkins Loan Program, for the borrower's full term of service in the Peace Corps, not to exceed three years.

Section 674.38 Deferment Procedures

Comments: Many commenters supported our proposal to eliminate the written request for deferment in the Federal Perkins Loan Program. The commenters believe that telephone or electronic requests by the borrower to the institution are an appropriate means for the borrower to request a deferment. They also stated that uniformity among the title IV loan program regulations, where possible, is beneficial for both institutions and borrowers.

All of the commenters, however, expressed concern about the disparities

that remain between the FFEL, Direct Loan, and Federal Perkins Loan Programs with regard to the processing of in-school deferments. Several commenters indicated that, in the FFEL and Direct Loan programs, a lender may use a certified loan application, a form certified by the borrower's school, or other data it receives from the Student Status Confirmation Report (SSCR) or another third-party servicer verifying the borrower's in-school status as sufficient documentation to initiate and process an in-school deferment. In these instances, the student borrower is not required to make a specific request for the deferment. The commenters pointed out that under the regulations proposed by the Secretary for the Federal Perkins Loan Program, borrowers would still be required to contact the institution to request an in-school deferment.

Discussion: We agree that consistency between the various title IV student loan programs is an important goal. We also believe that the use of technology to reduce administrative burden for institutions is equally important. We further agree that the regulatory changes proposed to facilitate the processing of in-school deferments in the Federal Perkins Loan Program may not provide schools with enough flexibility in the processing of those deferments.

After examining the applicability of the methods used in the FFEL and Direct Loan Program to the Federal Perkins Loan Program, we have decided that use of a certified loan application to initiate the in-school deferment process is impractical because there is no separate Federal Perkins Loan application to use for this process. However, we believe that data verifying the borrower's in-school enrollment status, either from a third-party servicer or from the school in which the borrower is enrolled, is sufficient documentation for a school participating in the Federal Perkins Loan Program to grant an in-school deferment. To preserve the borrower's ability to participate in the deferment process, we also believe that the institution should notify the borrower when it grants a deferment in this manner to provide the borrower with the option to decline the deferment and to continue paying on the loan.

Changes: A provision has been added to § 674.38(a) to allow an institution to determine a borrower's eligibility and grant an in-school deferment based on the institution's receipt of student enrollment information from the school in which the borrower is enrolled or from a third-party servicer. The institution must notify the borrower that a deferment has been granted and

provide the borrower with the option to continue paying on the loan.

Section 674.39 Postponement of Loan Repayments in Anticipation of Cancellation of Loans Made Before July 1, 1993.

Comments: Many commenters supported the Secretary's proposal to eliminate the written request for postponement of repayment in anticipation of cancellation for loans made under the Federal Perkins Loan Program before July 1, 1993.

Discussion: The Secretary published a notice of proposed rulemaking (NPRM) on July 29, 1999, in accordance with the Higher Education Amendments of 1998 (Pub. L. 105-244), that extends a deferment in anticipation of cancellation to all borrowers with a loan made under the Federal Perkins Loan Program. Because the extension of a deferment in anticipation of cancellation would eliminate the need for a postponement, the NPRM proposed to eliminate § 674.39 in its entirety from the Federal Perkins Loan Program regulations.

Changes: Proposed amendatory language with respect to § 674.39 has been eliminated from these final regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined are necessary for administering these programs effectively and efficiently. Burden specifically associated with information collection requirements, if any, was identified and explained in the preamble to the NPRM.

In assessing the potential costs and benefits, both quantitative and qualitative, of these final regulations, we have determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM (63 FR 49800).

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

The Federal Perkins Loan, Federal Family Education Loan, and William D. Ford Federal Direct Loan programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the responses to the NPRM and on our review, we have determined that the regulations do not 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 Numbers: 84.032 Stafford Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674 and 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 19, 1999.

Richard W. Riley

Secretary of Education.

For the reasons stated in the preamble, the Secretary amends parts 674 and 682 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 by:

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

2. Section 674.34 is amended as follows by:

A. Revising paragraph (e) introductory text.

B. Redesignating paragraphs (e)(6), (e)(7), (e)(8), and (e)(9) as (e)(7), (e)(8), (e)(9), and (e)(10), respectively.

C. Removing the word “or” at the end of paragraph(e)(4).

D. Removing the semicolon at the end of paragraph (e)(1), (e)(2), and (e)(3) and adding, in its place, a period.

E. Adding a new paragraph (e)(6).

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

* * * * *

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(6) of this section may be granted for the lesser of the borrower’s full term of service in the Peace Corps or the borrower’s remaining period of economic hardship deferment eligibility) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(6) of this section.

* * * * *

(6) Is serving as a volunteer in the Peace Corps.

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3. Section 674.38 is amended by redesignating paragraph (a)(2) as paragraph (a)(3), adding new paragraph (a)(2), and by revising paragraphs (a)(1) and (d) to read as follows:

§ 674.38 Deferment procedures.

(a)(1) Except as provided in paragraph (a)(2) of this section, a borrower must request the deferment and provide the institution with all information and documents required by the institution by the date that the institution establishes.

(2) In the case of an in school deferment, the institution may grant the deferment based on student enrollment information showing that a borrower is enrolled as a regular student on at least a half-time basis, if the institution notifies the borrower of the deferment and of the borrower’s option to cancel the deferment and continue paying on the loan.

* * * * *

(d) The institution must determine the continued eligibility of a borrower for a deferment at least annually, except that a borrower engaged in service described in §§ 674.34(e)(6), 674.35(c)(3), 674.36(c)(2), 674.37(c)(2), and § 674.60(a)(1) must be granted a deferment for the lesser of the borrower’s full term of service in the Peace Corps, or the borrower’s remaining period of eligibility for a deferment under § 674.34(e), not to exceed 3 years.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

4. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

5. Section 682.210 is amended by:

A. Redesignating paragraph (k) introductory text, following the heading *Peace Corps deferment.*, (k)(1), (k)(2), and (k)(3) as paragraphs (k)(1), (k)(1)(i), (k)(1)(ii), and (k)(1)(iii), respectively.

B. Adding new paragraph (k)(2).

C. Revising paragraph (s)(6) introductory text.

D. Redesignating paragraphs (s)(6)(vi), (vii), (viii), (ix), and (x) as paragraphs (s)(6)(vii), (viii), (ix), (x), and (xi), respectively.

E. By removing “; or” at the end of paragraph (s)(6)(iv), and adding, in its place, a period.

F. Removing the semicolon at the end of paragraphs (s)(6)(i), (s)(6)(ii), and (s)(6)(iii), and adding, in its place a period.

G. Removing “(s)(6)(ix)” in newly redesignated paragraphs (s)(6) (viii) and (ix) and by adding, its place, “(s)(6)(x)”.

H. Adding a new paragraph (s)(6)(vi).

§ 682.210 Deferment

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(k) * * *

(2) The lender must grant a deferment for the borrower’s full term of service in the Peace Corps, not to exceed three years.

* * * * *

(s) * * *

(6) *Economic hardship deferment.* An eligible borrower is entitled to an economic hardship deferment for periods of up to one year at a time that, collectively, do not exceed 3 years (except that a borrower who receives a deferment under paragraph (s)(6)(vi) of this section is entitled to an economic hardship deferment for the lesser of the borrower’s full term of service in the Peace Corps or the borrower’s remaining period of economic hardship deferment eligibility under the 3-year maximum), if the borrower provides documentation satisfactory to the lender showing that the borrower is within any of the categories described in paragraphs (s)(6)(i) through (s)(6)(vi) of this section.

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(vi) Is serving as a volunteer in the Peace Corps.

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