National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

**Need-based employment:** Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

**Post-deferment grace period:** That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

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

**Student loan:** For this part means an NDSL Loan, Defense Loan, or a Federal Perkins Loan.

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

(Authority: 20 U.S.C. 1070g, 1094)

§§ 674.3–674.4 [Reserved]

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

(a) Default penalty. If an institution’s cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

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

(2) **Ineligibility.** For award year 2000–2001 and succeeding award years, an institution with a cohort default rate that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year, or the remainder of the award year, in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

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

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

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

(ii) **Liquidation of an institution’s Perkins Loan portfolio.** Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary’s decision to deny the appeal, the institution must—
§ 674.5

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

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

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

(b) Cohort default rate. (1) The term “cohort default rate” means, for any award year in which 30 or more current and former students at the institution entered repayment on a loan received for attendance at the institution, the percentage of those current and former students who entered repayment in that award year on the loans received for attendance at that institution who defaulted before the end of the following award year.

(2) For any award year in which less than 30 current and former students at the institution entered repayment on a loan received for attendance at the institution, the “cohort default rate” means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) Defaulted loans to be included in the cohort default rate. For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower’s default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

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

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

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

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

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

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

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

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school;

(D) Repaid in full in accordance with §674.33(e) or §674(h); or

(E) Assigned to and conditionally discharged by the Secretary in accordance with §674.61(b).

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

(4) In the case of a student who has attended and borrowed at more than one institution, the student and her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year.

(d) Locations of the institution. (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution’s...
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status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(Authority: 20 U.S.C. 1087bb)

§§ 674.6–674.7 [Reserved]

§ 674.8 Program participation agreement.

To participate in the Federal Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

(1) FCC received under this subpart;

(2) Except as provided in paragraph (a)(1) of § 674.7—

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993–94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994–95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of § 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

(4) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

(5) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(6) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(7) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in 34 CFR 673.7;