

§ 674.50

34 CFR Ch. VI (7-1-05 Edition)

(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.

(Approved by the Office of Management and Budget under control number 1845-0023)

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

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 1652, Jan. 12, 1994; 59 FR 61412, Nov. 30, 1994; 64 FR 58313, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000]

§ 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if—

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in § 674.45(a) and litigation, if required under § 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is \$25.00 or greater; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) The Secretary may require an institution to submit the following documents for any loan it proposes to assign—

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in § 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) Documentation that the institution has complied with all of the due diligence requirements described in

paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

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

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is non-dischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order; or

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The Secretary may require the institution 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.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

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

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Subpart D—Loan Cancellation

SOURCE: 52 FR 45758, Dec. 1, 1987, unless otherwise noted.

§ 674.51 Special definitions.

The following definitions apply to this subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.