Due Diligence: Billing and Collection

CHAPTER 7

The school must afford the borrower maximum opportunity to repay a Federal Perkins Loan. Specific steps the school must take include, but are not limited to, billing the borrower, sending overdue notices, and conducting address searches if the borrower cannot be located. If billing procedures fail, a school must take more aggressive collection steps such as hiring a collection firm and/or litigating.

GENERAL REQUIREMENTS

General Requirements Cites

General
34 CFR 674.41(a)

Coordination of Information
34 CFR 674.41(b)

While billing and collection activities involve many steps, there are general requirements that your school must adhere to at all times. For information about maintaining billing and collection records, see chapter 1 of this volume

You must inform the borrower of all program changes that affect his or her rights and responsibilities. Your school must respond promptly to the borrower's inquiries. If a borrower disputes a loan and you cannot resolve the dispute, you must explain the services provided by the Department's Student Loan Ombudsman's office.

Keeping current information on a borrower makes it easier for the school to know when repayment must begin and where to send billing notices. The various offices at the school—the admissions, business, alumni, placement, financial aid, and registrar's offices, and others, as necessary—must provide any available information about the borrower that is relevant to loan repayment, including:

- the borrower's current enrollment status;
- the borrower's expected graduation or termination date;
- the date the borrower officially withdraws, drops below half-time enrollment, or is expelled; and
- the borrower's current name, address, telephone number, Social Security Number, and driver's license number (if any).

Exit Interviews

Exit Interview Cite
34 CFR 674.42(b)

Contact with the borrower becomes even more important as the borrower's last day of attendance approaches. Your school must conduct exit counseling with borrowers either in person, by audiovisual presentation, or by interactive electronic means. (If you conduct exit counseling through interactive electronic means, you must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the exit counseling.) Schools must conduct this counseling shortly before

SFA OMBUDSMAN

The Ombudsman's office is a resource for borrowers to use when other approaches to resolving student loan problems have failed. Borrowers should first attempt to resolve complaints by contacting the school, company, agency, or office directly involved. If the borrower has made a reasonable effort to resolve the problem through normal processes and has not been successful, he or she should contact the SFA Ombudsman.

Office of the Ombudsman
U.S. Dept. of Education
ROB-3, Room 3012
7th & D St. SW
Washington, DC 20202-5144

Toll-free: 1 (877) 557-2575
(202) 401-4498
Fax: (202) 260-1297

http://sfahelp.ed.gov

the student graduates or drops below half-time enrollment (if known in advance). If individual interviews are not possible, group interviews are acceptable.

As an alternative, in the case of students enrolled in a correspondence program or a study-abroad program that your school approves for credit, you may provide written counseling materials by mail within 30 days after the borrower completes the program.

During the exit interview, the financial aid counselor must review and update all of the repayment terms and information addressed in the initial loan counseling session. (See chapter 3 for a list of information included in the loan counseling session.) The school must also exchange the following additional information with the borrower:

- the name and address of the borrower's expected employer;
- debt-management strategies that the school determines would best assist the borrower;
- how to contact the Student Loan Ombudsman's office and an explanation of the services this office provides.

The financial aid counselor must emphasize the seriousness and importance of the repayment obligation the borrower is assuming, describing in forceful terms the likely consequences of default, including adverse credit reports, litigation and assignment to a collection agency. The counselor must further emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with the school's educational or other services.

If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling.

Finally, schools must document all exit interviews.

Disclosure of Repayment Information

Disclosure of Repayment Information Cite
34 CFR 674.42(a)

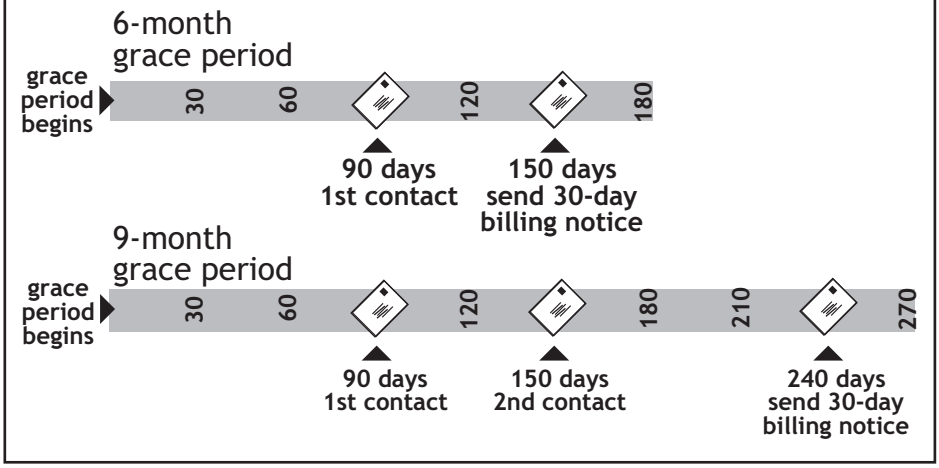
Either shortly before the borrower ceases at least half-time study or during the exit interview, schools must disclose critical repayment information to the borrower **in a written statement**. Your school must provide the borrower with a copy of his or her signed promissory note. (Until the Department develops and distributes new Perkins Loans promissory notes, you must also provide a copy of the addendum to the NDSL and Federal Perkins Loan promissory notes, which was published in Dear Colleague Letter CB-00-07, May 2000.) Most of the repayment terms that the school must disclose to the borrower already appear in the promissory note. The school must also give the borrower the following repayment information:

- the name and address of the school to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent;
- the name and address of the party to which payments should be sent;
- the estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin;
- the repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, the rate of interest and the number, amount, and frequency of required payments; and
- the total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

Since schools must conduct exit interviews, schools may find it is most convenient to give the borrower the repayment disclosure during the exit interview.

If a borrower enters the repayment period without the school's knowledge, the school must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

Contact with Borrower During Grace Period



Applicable Grace Periods	perkins	ndsl on or after 10-1-80	ndsl before 10-1-80
initial grace period	9 months	6 months	6 months
post-deferment period	6 months	6 months	none

Grace Period Contact Cite
34 CFR 674.42(c)

Contact During Grace Periods

A school must contact the borrower during both initial and post-deferment grace periods to remind him or her when repayment will begin or resume.

Your school must contact the borrower three times during the nine-month initial grace period. For a loan with a six-month initial grace period, the school must contact the borrower twice during that period. The school must also contact the borrower twice during any six-month post-deferment grace period. The chart below shows the length of initial and post-deferment grace periods for NDSLs and Perkins Loans.

The **first contact** must be **90 days** after any grace period (initial or post-deferment) begins. The school must remind the borrower that he or she is responsible for repaying the loan. The school must also inform the borrower of the amount of principal and interest, as projected for the life of the loan, and the due date and amount of the first (or next) payment.

The **second contact** must be **150 days** after any grace period begins, when the school must again remind the borrower of the due date and amount of the first (or next) payment. For loans with six-month grace periods, the second contact should coincide with the first billing notice. These two notices may be combined.

For loans with nine-month grace periods, the school must make a **third contact 240 days** after the grace period begins to remind the borrower of the date and amount of the first payment. This contact should coincide with the first billing notice. Again, the school may combine the two notices.

BILLING PROCEDURES

Billing Procedures Cite
34 CFR 674.43

Billing refers to that series of actions the school routinely performs to notify borrowers of payments due, remind them of overdue payments, and demand payment of overdue amounts.

The school may choose a coupon payment system as its method of billing. If so, the school must send the coupons to the borrower at least 30 days before the first payment is due.

If the school does not use a coupon system, it must, at least **30 days** before the first payment is due, send the borrower a statement of account and a written notice giving the name and address of the party to which payments should be sent. The statement of account includes information such as the total amount borrowed, the interest rate on the loan, and the amount of the monthly payment. For subsequent payments, the school must send the borrower a statement of account at least **15 days** before the due date of the payment.

If the borrower elects to make payments by means of an electronic transfer of funds from the borrower's bank account, the school is not required to send the borrower a statement of account at least 15 days before the due date of each subsequent payment. However, the school must send the borrower an annual statement of account.

Late Charges

Late Charges Cite
34 CFR 674.43(b)(2)

For loans made for periods of enrollment beginning on or after January 1, 1986, schools are required to impose a late charge when the borrower's payment becomes overdue. The charge is based either on the actual costs the school incurs in taking steps to obtain the overdue amount or on average costs incurred in similar attempts with other borrowers. The charge may not exceed 20 percent of the installment payment most recently due.

Your school must also impose a late charge if a borrower's payment is overdue and the borrower has not filed a complete request for forbearance, deferment, cancellation, or postponement on time. (To be complete, the request must contain enough information for you to confirm the borrower's eligibility.)

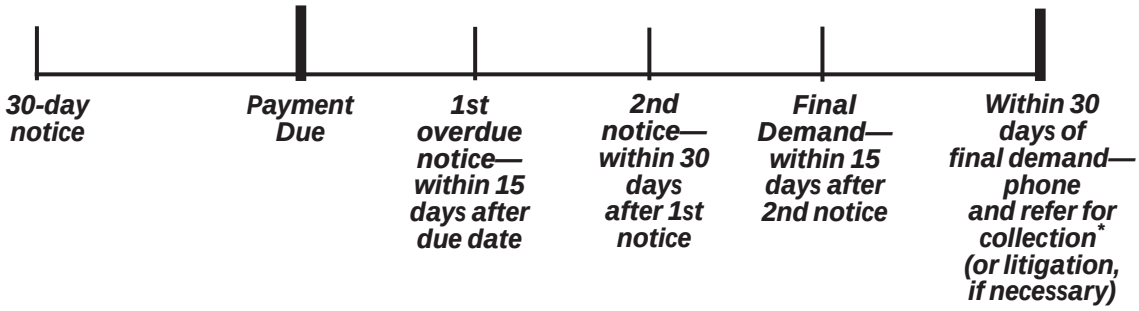
You may add the penalty or late charge to the principal amount of the loan as of the first day the payment was due. Alternatively, you may include the charge with the next payment that is scheduled after the date you notify the borrower that the charge must be paid in full by the next payment due date. You must inform the borrower of the late charge, preferably in the first overdue payment notice.

For a borrower who repays the full amount of past-due payments, the school may waive any late charges that were imposed.

Optional Penalty Charge for Periods of Enrollment Beginning Before 1/1/86
34 CFR 674.31(b)(5)(ii)
34 CFR 674 Appendix E

Schools are authorized but not required to assess a penalty charge for an overdue payment on a loan made for a period of enrollment that began before January 1, 1986. The maximum penalty charge that may be assessed on a loan payable monthly is $1 for the first month and $2 for each additional month a payment is overdue; the maximum penalty for a loan payable bimonthly is $3; the maximum penalty for loans payable quarterly is $6. Penalty charges on these loans may be assessed only during the billing process.

Billing Procedures



* *The school can use the services of the Department's Default Reduction Assistance Project (DRAP) before the loan goes to a collection firm; DRAP is discussed in chapter 8.*

Notices of Overdue Payments

Overdue Notices Cites
34 CFR 674.43(b)
34 CFR 674.43(c)

If a payment is overdue and you have not received a request for forbearance, deferment, postponement, or cancellation, you must send the borrower:

the **first** overdue notice 15 days after the payment due date;

the **second** overdue notice 30 days after the first overdue notice;

the **final demand letter** 15 days after the second overdue notice.

The final demand letter must inform the borrower that unless the school receives a payment or a request for forbearance, deferment, postponement, or cancellation **within 30 days** of the date of the letter, the school will refer the account for collection or litigation and will report the default to a credit bureau as required by law.

You may skip the first two letters and send just the final demand letter within **15 days** after a payment is overdue if the borrower's repayment history has been unsatisfactory or if you can reasonably conclude the borrower does not intend to repay the loan or to seek forbearance, deferment, postponement, or cancellation. A borrower is considered to have an unsatisfactory repayment history if he or she has failed to make payments when due, has failed to request deferment, forbearance, postponement, or cancellation on time, or has received a final demand letter.

Contacting the Borrower by Telephone

Telephone Contact Cite
34 CFR 674.43(f)

If the borrower does not respond to the final demand letter within 30 days, you must try to contact him or her by telephone before beginning collection procedures. As telephone contact is often very effective in getting the borrower to begin repayment, one call may avoid the more costly procedures of collection.

You should make at least two attempts to reach the borrower on different days and at different times. If the borrower has an unlisted telephone number, you must make reasonable attempts to obtain it by contacting sources such as the borrower's employer or parents. If you are still unsuccessful, you should document the contact attempts in your files.

Contacting the Endorser - Loans before July 23, 1992

If the borrower does not respond satisfactorily to the final demand letter, you must try to recover the amount owed from the borrower. For loans made prior to July 23, 1992, the school must also try to collect the amount owed from any endorser of the loan. It may help to send the endorser a copy of the final demand letter that was sent to the borrower and copies of all subsequent notices, including dunning letters. For loans made on or after July 23, 1992, an endorser is no longer required.

Loan Acceleration

Loan Acceleration Cite
34 CFR 674.43(e)

You may *accelerate* a loan if the borrower misses a payment or does not file for deferment, forbearance, postponement, or cancellation on time. Acceleration means making payable immediately the entire outstanding balance, including interest and any applicable late charges or collection fees. Because this marks a serious stage of default, the borrower should have one last chance to bring his or her account current. For that reason, if the school plans to accelerate the loan, it must send the borrower a written acceleration notice at least 30 days in advance. The notice may be included in the final demand letter or in some other written notice sent to the borrower. If the loan is accelerated, you must send the borrower another notice to inform him or her of the date the loan was accelerated and the total amount due. Remember that acceleration is an option, not a requirement. However, if you plan to assign the loan to the Department for collection, you must first accelerate the loan. Once a loan has been accelerated, the borrower loses all rights to deferment and cancellation benefits for qualifying service performed *after* the date of acceleration.

ADDRESS SEARCHES

Address Search Cite
34 CFR 674.44

The school must take the following steps to locate the borrower if communications are returned undelivered (other than unclaimed mail):

- review the records of all appropriate school offices and
- review printed or web-based telephone directories or check with information operators in the area of the borrower's last known address.

If these methods are unsuccessful, you must intensify efforts to locate the borrower, using either school personnel or a commercial skip-trace firm. If you use school personnel, you must employ and document efforts comparable to commercial skip-tracing firms. You may also choose to use the Internal Revenue Service skip-tracing service provided through the Department.

If you still can't locate the borrower after taking these steps, you must continue to make reasonable attempts at least twice a year until the account is assigned to the Department or the account is written off.

IRS/ED SKIPTRACING PROGRAM

To help locate a borrower whose collection notices are returned undelivered, a school may participate in the IRS/ED skip-tracing service. The Higher Education Amendments of 1992 *eliminated the requirement* that schools use the IRS/ED skip-tracing service in carrying out the provisions of due diligence. However, we strongly encourage schools to continue to use this service, which is one of the most powerful tools for locating defaulted borrowers. The Department will continue to send schools that participate in the Federal Perkins Loan Program periodic Dear Colleague letters that give instructions for completing the Safeguard Procedures and Activity Reports.

Schools wishing to participate in the IRS/ED skip-tracing service for the first time must submit a Safeguard Procedures Report. To maintain eligibility to participate in the IRS/ED skip-tracing service, you must submit an annual Safeguard Activity Report, in accordance with the IRS publication 1075. If your school fails to submit the Safeguard Activity Report, it will lose its eligibility to participate in the service. The reports document that the school has procedures to safeguard the names and addresses of defaulted borrowers under the Federal Perkins Loan Program.

Please note that due to contractual changes in the IRS/ED skip-tracing service, schools wishing to maintain eligibility for this service in the 2000-2001 Fiscal Year should have filed a Safeguard Procedures Report by September 30, 2000.

General questions should be directed to the Department's Campus-Based Operations Group at (202) 708-7741. Schools may also wish to review Dear Partner Letter CB-00-04, April 2000 for more information about the IRS/ED Skiptracing Program.

COLLECTION PROCEDURES

Collection Procedures Cites
34 CFR 674.45

Collection procedures are the more intensive efforts a school must make when borrowers have not responded satisfactorily to billing procedures and are considered seriously in default.

Ombudsman Information
34 CFR 674.45(h)

As part of the following collection activities, the school must inform the borrower of the availability of the Student Loan Ombudsman's Office.

Credit Bureau Reporting
34 CFR 674.45(a)(1)
34 CFR 674.45(b)

Credit Bureau Reporting

A school must report a defaulted loan account to a national credit bureau organization. You may report the default to a credit bureau with which your school has an agreement or to a credit bureau with which the Department has an agreement (see below). You must report any subsequent changes in the status of the borrower's account to the same national credit bureau, using the procedures required by that credit bureau. You must respond within one month to any inquiry received from any credit bureau about reported loan information. Finally, you must notify all credit bureaus to which you reported the default when a borrower makes six, consecutive, on-time monthly payments.

The Department has entered into an agreement with the four national credit bureaus listed below:

Trans Union (1-800/888-4213)

Experian (formerly TRW) (1-800/831-5614 ext. 3)

CBI Equifax (1-770/740-4376)
Ask for the CBI Equifax "territory" servicing your school.

Consumer Credit Association, Inc. (1-713/589-1190 ext. 2101)
Manager of Data Management Services

Credit bureaus charge fees for their services -- these fees differ from credit bureau to credit bureau. These bureaus also have affiliated credit bureaus, which may have different fees from those of the national credit bureaus. The Department does not keep a list of these affiliated bureaus and their fees.

The Privacy Act authorizes disclosure of a borrower's account information to creditors without the borrower's consent if the disclosure helps enforce the terms and conditions of the loan. You may also make such disclosures about loans that haven't defaulted and/or are being disbursed. Reporting good credit history (as well as reporting defaulted loans) is essential to ensure that current and future creditors have complete information regarding the credit obligations of the borrower.

Under the Fair Credit Reporting Act, a borrower may appeal the accuracy and validity of the information reported to the credit bureau and reflected in the credit report. You should be prepared to handle the appeal and make necessary corrections to the report as required by the provisions of the act.

Efforts to Collect

The school must make a **first effort** to collect using either its own personnel or hiring a collection firm.

Efforts to Collect Cites

First Attempt
34 CFR 674.45(a)(2)

Litigation or Second Attempt
34 CFR 674.45(c)

If the school's personnel or the collection firm cannot convert the account to regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, postponement, or cancellation), the school has two options—either to litigate or to make a second effort to collect.

A **second effort** to collect requires one of the following procedures:

- If the school first attempted to collect by using its own personnel, it must refer the account to a collection firm unless state law prohibits doing so.

- If the school first used a collection firm, it must attempt to collect by using its own personnel or by using a different collection firm, or the school must submit the account to the Department for assignment.

If a collection firm (retained by a school as part of its second effort to collect) cannot place an account into regular repayment status by the end of 12 months (or if the borrower does not qualify for forbearance, deferment, postponement, or cancellation), the firm must return the account to the school.

Annual Attempts Cite
34 CFR 674.45(d)

If the school is unsuccessful in its effort to place the loan in repayment after following the procedures above, the school must continue to make yearly attempts to collect from the borrower until:

- the loan is recovered through litigation;
- the account is assigned to the Department; or
- the loan is written off.

Ceasing Collection

Ceasing Collections Cites

Ceasing Collections
34 CFR 674.47(g)

Account Write-Off
34 CFR 674.47(h)

A school may cease collection activity on a defaulted account with a balance of less than **$25** (including outstanding principal, accrued interest, collection costs and late charges) if the borrower has been billed for this balance. A school may cease collection activity on defaulted accounts with balances of less than **$200** (including outstanding principal, accrued interest, collection costs and late charges) if the school carried out the required due diligence and if the account has had no activity for four years. Although interest will continue to accrue and may put the account over $25 (or $200), you will not have to resume collection activity if you document that you ceased collection activity when the account was under $25 (or $200). However, the borrower will remain responsible for repaying the account, including accrued interest, and you may not assign the account to the Department. The account will still be included in the school's cohort default rate, if applicable, and the borrower will still be in default and ineligible for Student Financial Assistance (SFA) funds.

A school may write off an account with a balance of **less than $5.00** (including outstanding principal, accrued interest, collection costs and late charges). If you write off an account, you must deduct the amount of the account from the Perkins Loan Fund. If you receive a payment from a borrower after you have written off the loan, you must deposit that payment into the fund.

Alternatives to Litigation

Collection Costs Waiver Cite
34 CFR 674.47(d)

To avoid litigation, a school may offer to waive collection costs as incentive for repayment. You may waive *all* collection costs on a loan if the borrower makes a lump-sum payment of the entire amount outstanding, including principal and interest; a written repayment agreement is not required. You may also waive a *portion* of the collection costs on a loan if the borrower agrees to pay a

corresponding portion of the loan within 30 days of entering into a written repayment agreement with the school. For example, if the borrower repays one-half the outstanding balance on a loan within 30 days of the agreement, the school may waive one-half of the collection costs incurred through the date of that payment. The amount of waived collection costs may be charged to the Perkins Loan Fund.

Compromise Cite
34 CFR 674.33(e)

You may compromise the repayment of a defaulted loan if you have fully complied with all due diligence requirements and the borrower pays, in a single lump-sum payment, at least 90 percent of the outstanding principal balance, plus all interest and collection fees. The federal share of the compromise repayment must bear the same relation to the school's share as the Federal Capital Contribution (FCC) bears to the Institutional Capital Contribution (ICC).

A borrower may rehabilitate a defaulted Perkins Loan by making twelve consecutive on-time payments. A rehabilitated loan is returned to regular repayment status. (See chapter 8 for more information.)

A borrower may include her defaulted Perkins Loan, NDSL, or Defense Loan in a Direct or Federal Consolidation Loan. The amount eligible for consolidation under either program is the sum of the unpaid principal, accrued unpaid interest, late charges, and outstanding collection costs. A defaulted loan that is being repaid under a **court order** remains in default status until paid and is **not** eligible for consolidation.

Litigation

Litigation Cites
34 CFR 674.46
HEA 484(a)

If the collection procedures described in this section do not result in the repayment of a loan, the school must review the account for litigation at least once a year. If all the conditions are met, the school **must** litigate. The conditions are:

- the total amount owed, including outstanding principal, interest, collection costs, and late charges, on all the borrower's Perkins Loans and NDSLs at the school is more than $200;
- the borrower can be located and served with process;

Consolidating Defaulted Perkins Loans

A borrower with a defaulted Perkins Loan and an outstanding FFEL should contact his or her current FFEL lender for information about obtaining a Federal Consolidation Loan.

A borrower with a defaulted Perkins Loan and an outstanding Direct Loan can get information about obtaining a Direct Consolidation Loan by contacting the Direct Loan Consolidation Department at 1-800-557-7392 or by visiting the Direct Loan web site: http://www.ed.gov/DirectLoan.

- the borrower either has enough assets attachable under state law to cover a major portion of the debt or enough income that can be garnished under state law to satisfy a major portion of the debt over a reasonable period of time (defining a "reasonable period of time" is left to the school);

- the borrower does not have a defense that will bar judgment for the school; and

- the expected cost of litigation (including attorneys' fees) does not exceed the amount that can be recovered from the borrower.

Even if all the above conditions are **not** met, your school may sue if it chooses to do so. If the borrower has a partial defense that may bar judgment for the school, you must weigh the costs of litigation against the costs of recovery based on the amount of the enforceable portion of the debt. No federal or state statute of limitation can apply to enforcement actions to collect Perkins Loans or NDSL's.

Your school must attempt to recover from the borrower all litigation costs, including attorneys' fees, court costs, and other related costs, to the extent permitted by applicable state law. You are also required to try to recover all costs previously incurred in the collection of overdue payments if the borrower has not paid these collection costs; a percentage of these unrecovered costs may be charged to the fund as explained below.

When a school has filed suit to collect a defaulted Perkins Loan or NDSL and a judgment has been rendered on the loan, the borrower is obligated to repay only the amount of the judgment obtained on the loan. A defaulted loan that is being repaid under court order remains in default status until paid and is not eligible for consolidation. After a judgment is satisfied on the defaulted loan, the student is again eligible for future awards under these programs if all other eligibility criteria are met.

Your school may assign the account to the Department for collection if the amount outstanding is **$25 or more** (including principal, interest, collection costs, and late charges) and your school cannot collect a payment after following all collection procedures (including litigation, if required).

BILLING AND COLLECTION COSTS

Your school must charge the borrower for reasonable **billing** costs associated with past-due payments (not routine billing costs, which are included in the administrative cost allowance [ACA]), and **collection** costs for address searches, use of contractors for collection of the loan, litigation, and/or bankruptcy proceedings.

If your school cannot recover billing and collection costs from the borrower, you may charge the costs to the fund, provided the costs fall within the specifications described in the following paragraphs. (Collection costs are included in the ACA, but if collection costs exceed the ACA, you must report the additional costs in the separate 'collection costs' category on the FISAP.)

Charging Costs to Fund Cite
34 CFR 674.47

The only **billing** costs a school may charge the fund are the costs of telephone calls made to demand payment of overdue amounts not paid by the borrower. Even 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 school may charge the fund only for the unpaid portion of the actual cost of the calls.

The following **collection** costs may be charged to the Perkins Loan Fund if the costs are **waived** or **not paid by the borrower:**

Collection costs waived. If your school waives collection costs as incentive for repayment, the amount waived may be charged to the fund.

Cost of a successful address search. You may charge to the fund a reasonable amount for the cost of a successful address search if you used a commercial skip-tracing service or employed your school's personnel to locate the borrower using comparable methods. (Defining a reasonable amount is left to the school.)

Cost of reporting defaulted loans to credit bureaus. You may charge to the fund the cost of reporting a defaulted loan to a credit bureau, reporting any change in the status of a defaulted account to the bureau to which the school had previously reported the account, and responding to any inquiry from a credit bureau about the status of a loan.

Costs of first and second collection efforts. You may charge to the fund collection costs not paid by the borrower if they do not exceed—for first collection efforts—30 percent of the total principal, interest, and late charges collected and—for second collection efforts—40 percent of the principal, interest, and late charges collected. The school must reimburse the fund for collection costs initially charged the fund but subsequently paid by the borrower.

Collection costs resulting from rehabilitation. Collection costs charged to the borrower on a rehabilitated loan may not exceed 24% of the unpaid principal and accrued interest as of the date following application of the twelfth payment. Until July 1, 2002, if the actual collection costs exceed 24% of the unpaid principal and accrued interest, the school may charge the fund the remaining costs.

Collection Costs for Loans Made from 1981through1986

*For loans made from 1981 through 1986, many promissory notes contain a limitation on the amount of costs that can be recovered from the borrower (25 percent of the outstanding principal and interest due on the loan). As this provision has not been applicable since the beginning of the 1987-88 award year, if these borrowers ask for new advances, the Department strongly encourages schools to issue new promissory notes without this provision and to require the provisions of the new note to apply to repayment of previous advances. The borrower will then be liable for **all** collection costs on all of his or her outstanding loans borrowed under this program. (However, that advances made prior to the signing of the new note do not qualify for new deferment and cancellation benefits.)*

Collection costs resulting from litigation, including attorney's fees. Collection costs resulting from litigation, including attorney's fees, may be charged to the fund if not paid by the borrower, but must not exceed the sum of:

- court costs specified in 28 U.S.C. 1920;

- other costs incurred in bankruptcy proceedings in taking actions required or authorized under 34 CFR 674.49;

- costs of other actions in bankruptcy proceedings to the extent that those costs together with other costs incurred in bankruptcy proceedings do not exceed 40 percent of the total amount of judgment obtained on the loan; and

- 40 percent of the total amount recovered from the borrower in any other proceeding.

Costs of firm performing both collection and litigation services. If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, the amount for both functions that may be charged to the fund may 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.

Due diligence activities involving **fixed costs** (telephone contacts, credit bureau reporting, and bankruptcy procedures) may be charged to the fund whether or not the actions are successful. Other activities, such as address searches, collection, and litigation (other than bankruptcy), are typically performed on a **contingent-fee** basis. If these activities are *unsuccessful*, there are no costs charged to the school and therefore no costs may be charged to the fund. If these activities are *successful*, you may charge the associated allowable costs to the fund.

Assessing and Documenting Costs

Assessing Costs Cite
34 CFR 674.45(e)

You may charge either actual costs incurred in collecting the borrower's loan or average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

Your school must assess all reasonable collection costs against the borrower despite any provisions of state law that would conflict with the above provisions.

You must document the basis for the costs assessed. For audit purposes, a school keep documentation supporting costs, including telephone bills and receipts from collection firms.

You should provide a notice explaining to the borrower how your school calculates collection costs.

USING BILLING AND COLLECTION FIRMS

Billing and Collection Firms Cite
34 CFR 674.48

Your school may use a contractor for billing or collection, but it is still responsible for complying with due diligence regulations regarding those activities. For example, the school, not the billing or collection firm, is responsible for deciding whether to sue a borrower in default. The school is also responsible for decisions about canceling, postponing, or deferring repayment, granting forbearance, extending the repayment period, and safeguarding the funds collected.

If you use a billing service, you may not use a collection firm that owns or controls the billing service or is owned or controlled by the billing service. In addition, you may not use a collection firm if both the collection firm and billing service are owned or controlled by the same corporation, partnership, association, or individual.

Required Billing and Collection Practices

You must ensure that the billing service or collection firm provides, at least quarterly, a statement showing the activities for each borrower, such as amounts collected or changes in the borrower's name, address, telephone number, or Social Security Number, if known. You must also ensure that the billing service provides, at least quarterly, a list of charges for skip-tracing activities and telephone calls.

You are responsible for ensuring that the billing service or collection firm instructs the borrower to mail payment checks either directly to the school or to a bank where a lock-box is maintained for the school. Alternatively, the service or firm may deposit the funds into an interest-bearing school trust account.

If a billing service or a collection firm deposits funds received directly from the borrower into a school trust account and the funds will be held for more than 45 days, the school trust account must be an interest-bearing account. You may authorize a collection firm to deduct its fees from borrower payments before depositing the funds. You **may not** authorize a billing service to deduct its fees from borrower payments.

The collection firm may commingle in its accounts the funds collected as long as it can identify the interest earnings and the amount collected by the school. If a collection firm chooses this procedure, you may still authorize the firm to deduct its fees before depositing the amount collected.

Account Protection

A school must ensure that its billing service and collection firm maintain a fidelity bond or comparable insurance to protect the accounts they service.

If you **don't** authorize your collection firm to deduct its fees from borrowers' payments, the firm must be bonded or insured for at least the amount that you expect to be repaid over a two-month period on the assigned accounts.

If you **do** authorize your collection firm to deduct its fees from borrowers' payments you must ensure that:

- if the amount you expect to be repaid over a two-month period is **less than $100,000** -- the collection firm is bonded or insured for the lesser of (a) 10 times the amount the school expects to be repaid over a two-month period on assigned accounts; **or** (b) the amount the firm expects to collect in a two-month period on **all** accounts it has in its portfolio (not just the school's account.)

- if the amount you expect to be repaid in a two-month period is **$100,000 or more** -- the collection firm has a fidelity bond or comparable insurance **that names your school as the beneficiary** and is bonded or insured for an amount not less than the amount of funds the school can reasonably expect to be repaid during that two-month period.

At least once a year, the school must review the amount of repayments it expects to receive from billing or collection firms to ensure adequate bond or insurance coverage.

A school using a law firm to collect must review the firm's bond or its insurance policy to determine whether the firm is protected against employee misappropriation. If the firm's malpractice insurance also covers misappropriation of funds, that policy is considered to provide coverage.