

The California State University
Office of the Chancellor
400 Golden Shore
Long Beach, CA 90802-4275
(562) 985-2678

Date: January 23, 1998

Code: TECHNICAL LETTER
HR/Benefits 6600
98-05

To: Vice Presidents, Administration
Human Resources Directors

From: Cathy Robinson, Senior Director
Human Resources Administration

Subject: STUDENT ASSISTANTS AND SOCIAL SECURITY EXEMPTION

Internal Revenue Service (IRS) Code Section 3121(b)(10) excludes services performed by students employed by a school, college or university from Social Security and Medicare coverage. This exclusion is referred to as the Student FICA exemption. Last week, IRS released Revenue Procedure 98-16 which sets general standards for determining whether services performed by a student qualify for the Student FICA exemption. These standards eliminate the need for universities to look to the IRS Technical Service Memorandum "safe harbor" guidelines referenced in coded memorandum HR 96-08. The following information is attached for your immediate reference and guidance:

Attachment A: CSU Summarized Highlights of Revenue Procedure 98-16.
Provided as a brief overview only.

Attachment B: IRS Revenue Procedure 98-16.
Final procedure issued January 16, 1998.

Attachment C: Department of Education Code 674.2(b)(3) Definitions of half time graduate and undergraduate student. *Referenced in 98-16.*

Each campus needs to undertake its own independent assessment to develop appropriate campus student employment policies and procedures in light of Revenue Procedure 98-16. The following two student assistant classifications continue to be available for use as determined appropriate: Student Assistant Code 1870 (FICA excluded) and Bridge Student Assistant Code 1874 (covered by the DPA PST Retirement Plan) as noted in coded memorandums HR 96-08 and HR/Benefits 6600 96-07.

Please be advised that CSU's policy regarding Student Assistant employment practices is not affected by IRS Revenue Procedure 98-16.

If you have any questions, please contact Theresa Hines at 562-985-2674 or Pam Chapin at 562-985-2652. Thank you.

CR/ib

Attachments

Distribution: (All with Attachments)

Presidents
Senior Vice Chancellor, Business and Finance
Interim Senior Director, Human Resources
Vice Presidents, Academic Affairs
Vice Presidents/Deans of Students

Associate Vice Presidents/Deans, Faculty Affairs
Budget Managers
Benefits Officers
Payroll Supervisors
Library Directors

**REVENUE PROCEDURE 98-16
CSU SUMMARIZED HIGHLIGHTS BY SECTION**

SECTION 1. PURPOSE

Revenue procedure 98-16 sets general standards for determining whether services in the employ of certain public or nonprofit schools, colleges, universities, or affiliated organizations described in section 509 (a) (3) of the Internal Revenue Code (Code) performed by a student qualifies for exemption from the Federal Insurance Contributions Act (FICA) under 3121(b)(10) of the Code.

SECTION 2. SCOPE

.01 Institutions of higher education distinguish between career employees and student employees. Sections 5 and 6 of 98-16 present standards for determining whether or not services performed by career and student employees are eligible for the student FICA exemption.

.02 Standards in 98-16 do not apply to employees who are postdoctoral students, postdoctoral fellows, medical residents, or medical interns.

.03 Standards in 98-16 do not constitute the exclusive method for determining whether the FICA exemption applies. The standards for qualifying for the exemption depend on consideration of all facts and circumstances.

SECTION 3. BACKGROUND

.01 Code Sections 3101 and 3111 impose FICA taxes on employees and employers .

.02 Code Section 3121(a) defines "wages" for FICA tax purposes as all employment remuneration, with certain exceptions. Section 3121(b) defines "employment" as services performed by an employee for an employer, with certain exceptions.

.03 Code Section 3121(b)(10) exempts services performed in the employ of a university from the employment definition, if the service is performed by a student who is enrolled and regularly attending class. Remuneration for services excluded from the definition of employment under Section 3121(b)(10) is not subject to FICA taxes.

.04 Code Section 31.3121(b)(10)-2 of the Employment Tax Regulations provides that an employee's status as student is determined on the basis of the employee's relationship with the university for which the services are being performed. **An employee who performs services in the employ of a university as incident to and for the purpose of pursuing a course of study at the university has the status of student in the performance of those services.** Employment that is not incident to and for the purpose of pursuing a course of study does not qualify for the exception.

.05 Refers to Section 218 of the Social Security Act which allow states to provide FICA coverage for services of students in a public school. Not applicable to the CSU.

SECTION 4. INSTITUTIONS OF HIGHER EDUCATION

.01 Standards in 98-16 apply to institutions of higher education which include public or private nonprofit schools, colleges, universities or affiliated organizations.

.02 Services for other institutions may also be eligible for the Student FICA exemption and the exemption is determined based on the facts and circumstances of each case.

SECTION 5. STANDARDS APPLICABLE TO CAREER EMPLOYEES

.01 Services performed by career employees are not eligible for the student FICA exemption because their employment cannot generally be considered to be incident to and for the purpose of pursuing a course of study. However, a career employee may be eligible for the Student FICA exemption, based on consideration of all the facts and circumstances.

.02 **“Career employee”** is defined as any individual performing services for an institution of higher education who is:

- (1) eligible to participate in a retirement plan or would be eligible to participate if service requirements were met;
- (2) eligible to participate in a 403(b) tax sheltered annuity program;
- (3) eligible for reduced tuition because of the individual’s employment relationship with the institution; or
- (4) classified as a career employee.

.03 If the individual performs services in multiple job positions and is a career employee in any one of the positions, the individual is a career employee with respect to all positions.

SECTION 6. STANDARDS APPLICABLE TO UNDERGRADUATE AND GRADUATE STUDENTS

.01 An individual who is a half-time undergraduate, graduate or professional student and is not a career employee will qualify under the FICA exemption.

.02 An individual is considered a half-time undergraduate, graduate or professional student if he/she is not a career employee and is in the last semester, trimester, or quarter of a course of study requiring at least two semesters, trimesters, or quarters to complete and is enrolled in the number of credit or unit hours needed to complete the requirements for obtaining a degree, certificate, or other recognized educational credential even if enrolled in less than half the number required of full-time students.

.03 Determination of student status should be made at the end of the drop-add period and may be adjusted thereafter at the university’s option. Determination of student status for payroll periods ending before the end of the drop-add period may be based on the number of semester, trimester, or quarter hours being taken at the end of the registration period.

.04 If an individual is described in sections 6.01 or 6.02 above, services performed are eligible for the Student FICA exemption with respect to all services performed during all payroll periods of a month or less that fall wholly or partially within the academic term.

.05 The Student FICA exemption **DOES NOT** apply to services performed by an individual who is not enrolled in classes during school breaks of more than five (5) weeks (including summer breaks of more than 5 weeks, other than services described in section 6.04). However, the Student FICA exemption applies to employment which continues during normal school breaks of 5 weeks or less provided that the individual qualifies for the Student FICA exemption on the last days of classes or exams preceding the break and is eligible to enroll in classes for the first academic period following the break.

.06 If the standards are met, the amount of remuneration for services performed by the employee, the type of service performed by the employee, the place where the services are performed, and the number of hours worked by the employee are immaterial.

SECTION 7. DEFINITIONS

Definitions for undergraduate student, half-time undergraduate student, graduate or professional student and half-time graduate or professional student are provided. *(These definitions reference Department of Education regulations provided in Attachment C.)*

SECTION 8. ANTI-ABUSE RULE

The standards in 98-16 must be applied in a reasonable manner, consistent with the purpose of excluding from employment only those services performed as incident to and for the purpose of pursuing a course of study at the university.

The full text of the Internal Revenue Service ruling on the liability of half-time students to pay Social Security taxes. (Posted January 19, 1998)

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 401: Employment taxes.

(Also Part I, Sections 3121; 31.3121(b)(10)-2.) Rev. Proc. 98-16

SECTION 1. PURPOSE

This revenue procedure sets forth generally applicable standards for determining whether service in the employ of certain public or private nonprofit schools, colleges, universities, or affiliated organizations described in Section 509(a)(3) of the Internal Revenue Code (the Code) performed by a student qualifies for the exception from Federal Insurance Contributions Act (FICA) tax provided under Section 3121(b)(10) of the Code (Student FICA exception). These standards are intended to provide objective and administrable guidelines for determining employment tax liability. The Student FICA exception standards were developed in response to requests for guidance by many public and private nonprofit institutions of higher education.

SECTION 2. SCOPE

.01 Institutions of higher education typically distinguish between career employees and student employees. Sections 5 and 6 of this revenue procedure contain generally applicable standards for determining whether or not services performed by career employees and student employees are eligible for the Student FICA exception.

.02 The standards contained in this revenue procedure do not apply to employees who are postdoctoral students, postdoctoral fellows, medical residents, or medical interns because the services performed by these employees cannot be assumed to be incidental to and for the purpose of pursuing a course of study. .03 The standards contained in this revenue procedure do not constitute the exclusive method for determining whether the Student FICA exception applies. Thus, for example, if the standard for qualifying for the exclusion described in section 6 of this revenue procedure is not met, whether or not service in the employ of a school, college, university, or affiliated organization described in Section 509(a)(3) of the Code will qualify for the Student FICA exception will depend on consideration of all the facts and circumstances.

SECTION 3. BACKGROUND

.01 Sections 3101 and 3111 of the Code impose social security and Medicare taxes (FICA taxes) on employees and employers, respectively, equal to a percentage of the wages received by an individual with respect to employment.

.02 Section 3121(a) of the Code defines "wages" for purposes of FICA taxes as all remuneration for employment, with certain exceptions. Section 3121(b) of the Code defines "employment" as services performed by an employee for an employer, with certain exceptions.

.03 Section 3121(b)(10) of the Code excepts from the definition of employment services performed in the employ of a school, college, or university (whether or not that organization is exempt from income tax), or an affiliated organization described in Section 509(a)(3) of the Code, if the service is performed by a student who is enrolled and regularly attending classes at that school, college or university. Remuneration for services excluded from the definition of employment under Section 3121(b)(10) of the Code is not subject to FICA taxes.

.04 Section 31.3121(b)(10)-2 of the Employment Tax Regulations provides that whether an employee has the

status of a student is determined on the basis of the employee's relationship with the school, college, or university for which the services are being performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at the school, college, or university has the status of a student in the performance of those services. Employment that is not incident to and for the purpose of pursuing a course of study does not qualify for the exception. If the employee does perform services as an incident to and for the purpose of pursuing a course of study and, therefore, has the status of a student, the amount of remuneration for services performed by the employee, the type of services performed by the employee, and the place where the services are performed are immaterial for purposes of the Student FICA exception.

.05 Section 218 of the Social Security Act (the Act), 42 U.S.C. section 418, allows states to provide Social Security coverage for services performed by students for the public school the student is attending under agreements established with the Social Security Administration. If a state has exercised its option under Section 218 of the Act to provide for coverage of student services, Section 3121(b)(10) of the Code provides that those services will not qualify for the Student FICA exception.

SECTION 4. INSTITUTIONS OF HIGHER EDUCATION

.01 The standards contained in this revenue procedure apply to institutions of higher education. For purposes of this revenue procedure, the term "institution of higher education" includes any public or private nonprofit school, college, university, or affiliated organization described in Section 509(a)(3) of the Code that meets the requirements set forth in Department of Education regulations at 34 C.F.R. Section 600.4 (1997), as amended from time to time, and that is accredited or preaccredited by a nationally recognized accrediting agency as defined in the Department of Education regulations at 34 C.F.R. Section 600.2 (1997).

.02 Services for other institutions may also be eligible for the Student FICA exception. Thus, for example, services performed by a student for a secondary school may be eligible for the Student FICA exception. Whether or not services for other institutions, such as secondary schools, qualify for the Student FICA exception is determined based on the facts and circumstances of each case.

SECTION 5. STANDARDS APPLICABLE TO CAREER EMPLOYEES

.01 Services performed by career employees are not eligible for the Student FICA exception under the standard in section 6 of this revenue procedure because their employment cannot generally be considered to be incident to and for the purpose of pursuing a course of study. However, a career employee may be eligible for the Student FICA exception, based on consideration of all the facts and circumstances.

.02 For purposes of this revenue procedure, the term "career employee" is defined as any individual performing services for an institution of higher education who--

(1) is eligible to participate in any retirement plan described in Section 401(a) of the Code that is established or maintained by the institution, or would be eligible to participate if age and service requirements were met;

(2) is eligible to receive an allocation of employer contributions other than contributions described in Section 402(g) of the Code under an arrangement described in Section 403(b) of the Code, or would be eligible to receive such allocations if age and service requirements were met, or if contributions described in Section 402(g) of the Code were made by the employee;

(3) is eligible for reduced tuition (other than qualified tuition reduction under Section 117(d)(5) of the Code provided to a teaching or research assistant who is a graduate student as described in section 7.03 of this revenue procedure) because of the individual's employment relationship with the institution; or

(4) is classified by the institution of higher education as a career employee.

.03 If an individual performs services in multiple job positions, the individual will be deemed a career employee with respect to all of the positions if the individual is a career employee in any one or more of the job positions.

SECTION 6. STANDARDS APPLICABLE TO UNDERGRADUATE AND GRADUATE STUDENTS

.01 An individual who is a half-time undergraduate student or a half-time graduate or professional student and who is not a career employee will qualify for the Student FICA exception under this revenue procedure with respect to

services performed at or for institutions of higher education in which they are enrolled or at affiliated organizations described in Section 509(a)(3) of the Code. Services performed by a student for any other employer do not qualify for this exception.

.02 An individual is deemed to be a half-time undergraduate or half-time graduate or professional student if the individual is not a career employee and is an undergraduate or graduate student who is in the last semester, trimester, or quarter of a course of study requiring at least two semesters, trimesters, or quarters to complete and is enrolled in the number of credit or unit hours needed to complete the requirements for obtaining a degree, certificate, or other recognized educational credential offered by that institution of higher education even if enrolled in less than half the number required of full-time students.

.03 The determination of student status should be made at the end of the drop-add period and may be adjusted thereafter at the institution of higher education's option. The determination of student status for payroll periods ending before the end of the drop-add period may be based on the number of semester, trimester, or quarter hours being taken at the end of the registration period for that semester, trimester, or quarter.

.04 If an individual is described in section 6.01 or 6.02 of this revenue procedure, services performed by the individual are eligible for the Student FICA exception with respect to all services performed during all payroll periods of a month or less that fall wholly or partially within the academic term.

.05 The Student FICA exception does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks (including summer breaks of more than five weeks), other than services described in section 6.04. See Rev. Rul. 72-142, 1972-1 C.B. 317, and Rev. Rul. 74-109, 1974-1 C.B. 288. However, the Student FICA exception applies to employment which continues during normal school breaks of 5 weeks or less during which the individual is not eligible for the Student FICA exception pursuant to section 6.01 of this revenue procedure provided that the individual qualifies for the Student FICA exception pursuant to section 6.01 of this revenue procedure on the last day of classes or examinations preceding the break and is eligible to enroll in classes for the first academic period following the break.

.06 If the standards of this revenue procedure are met (and section 8 does not apply), the amount of remuneration for services performed by the employee, the type of services performed by the employee, the place where the services are performed, and the number of hours worked by the employee are immaterial. If the services performed by a student otherwise described in section 6.01 or 6.02 are covered under an agreement pursuant to Section 218 of the Act, the Student FICA exception does not apply.

.07 For provisions relating to domestic service performed by a student in a local college club, or local chapter of a college fraternity or sorority, see Section 31.3121(b)2-1.

SECTION 7. DEFINITIONS

For purposes of the standard contained in section 6 of this revenue procedure, the following definitions must be used.

.01 Undergraduate student. The term "undergraduate student" has the meaning attributed to that term in the Department of Education regulations at 34 C.F.R. Section 674.2 (1997).

.02 Half-time undergraduate student. The term "half-time undergraduate student" has the meaning attributed to that term in the Department of Education regulations at 34 C.F.R. Section 674.2 (1997).

.03 Graduate or professional student. The term "graduate or professional student" means a student who--

(1) is enrolled at an institution of higher education for the purpose of obtaining a degree, certificate, or other recognized educational credential above the baccalaureate level or is enrolled in a program leading to a professional degree;

(2) has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) is not a postdoctoral student, postdoctoral fellow, medical resident, or medical intern.

.04 Half-time graduate or professional student. The term "half-time graduate or professional student" means an enrolled graduate or professional student, as defined in section 7.03 of this revenue procedure, who is carrying at least a half-time academic workload at an institution of higher education as determined by that institution according

to its own standards and practices.

SECTION 8. ANTI-ABUSE RULE

The standards in this revenue procedure must be applied in a reasonable manner, consistent with the purpose of excluding from employment only services that are performed as an incident to and for the purpose of pursuing a course of study at a school, college or university. See Section 31.3121(b)(10)-2(c). If the standards are inappropriately applied in a manner that conflicts with this underlying purpose so as to manipulate or mischaracterize the nature of the relationship between an employee and an institution of higher education, resulting in the improper avoidance of payment of FICA taxes, then whether the Student FICA exception applies will be determined on the basis of all the facts and circumstances, rather than on the basis of the specific standards set forth in sections 5 and 6 of this revenue procedure. For example, the standards would be inappropriately applied through the manipulation of the relationship between employees and the institution of higher education if a university claimed that the Student FICA exception applied to research laboratory workers, who had been career employees, but were converted to non-career status and required to enroll in a certificate program granting six credit hours per semester for work experience in the laboratory. As another example, if an individual who was not a student worked for a university on a full-time basis for many years, in a job generally performed by non-students (but nonetheless failed to meet the literal definition of career employee), and then enrolled at the university for six credit hours of course work per semester while continuing the full-time work in the same job, it may not be appropriate to apply the standards of this revenue procedure to conclude that the individual's work has become incident to and for the purpose of pursuing a course of study solely because the individual enrolled for this course work. In both of these examples, whether the work is performed incident to and for the purpose of pursuing a course of study must be determined on the basis of all the relevant facts and circumstances.

DRAFTING INFORMATION

The principal author of this revenue procedure is Neil D. Shepherd of the Office of Assistant Chief Counsel (Employee Benefits & Exempt Organizations). For further information regarding this revenue procedure, please contact Mr. Shepherd at (202) 622-4606 (not a toll-free number).

§ 674.1

34 CFR Ch. VI (7-1-97 Edition)

- 674.39 Postponement of loan repayments in anticipation of cancellation—loans made before July 1, 1993.
- 674.40 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

Subpart C—Due Diligence

- 674.41 Due diligence—general requirements.
- 674.42 Contact with the borrower.
- 674.43 Billing procedures.
- 674.44 Address searches.
- 674.45 Collection procedures.
- 674.46 Litigation procedures.
- 674.47 Costs chargeable to the Fund.
- 674.48 Use of contractors to perform billing and collection or other program activities.
- 674.49 Bankruptcy of borrower.
- 674.50 Assignment of defaulted loans to the United States.

Subpart D—Loan Cancellation

- 674.51 Special definitions.
- 674.52 Cancellation procedures.
- 674.53 Teacher cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.
- 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992.
- 674.55 Teacher cancellation—Defense loans.
- 674.56 Employment cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.
- 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.
- 674.58 Cancellation for service in a Head Start program.
- 674.59 Cancellation for military service.
- 674.60 Cancellation for volunteer service—Perkins loans.
- 674.61 Cancellation for death or disability.
- 674.62 No cancellation for prior service—no repayment refunded.
- 674.63 Reimbursement to institutions for loan cancellation.

APPENDIX E TO PART 674. EXAMPLES FOR COMPUTING MAXIMUM PENALTY CHARGES (8 MONTHS UNPAID OVERDUE PAYMENTS) ON DIRECT LOANS MADE FOR PERIODS OF ENROLLMENT BEFORE JANUARY 1, 1996

AUTHORITY: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429 unless otherwise noted.

Subpart A—General Provisions

SOURCE: 52 FR 45747, Dec. 1, 1987, unless otherwise noted.

§ 674.1 Purpose and identification of common provisions.

(a) The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Federal Perkins Loan Program, authorized by title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program, is a continuation of the National Defense Loan Program authorized by title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under title II before the enactment of title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under title IV-E to include the assets of an institution's student loan fund established under title II.

(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under title IV-E of the HEA or title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, sec. 137(d)(1))

(52 FR 45747, Dec. 1, 1987, as amended at 57 FR 32344, July 21, 1992; 59 FR 61415, Nov. 29, 1994)

§ 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

- Academic year
- Award year
- Defense loan
- Direct loan
- Enrolled
- Federal Family Education Loan (FFEL) programs
- Federal Pell Grant
- Federal Perkins loan
- Federal Perkins Loan Program
- Federal PLUS Program
- Federal SLS Program
- Federal Supplemental Educational Opportunity Grant (FSEOG) Program
- Federal Work-Study (FWS) Program
- Full-time student

Off. of Postsecondary Educ., Education

§674.2

HEA
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Payment period
Secretary

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

***Expected family contribution (EFC):** The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

***Financial need:** The difference between a student's cost of attendance and his or her EFC.

Fund (Federal Perkins Loan Fund): A fund established and maintained according to §674.8.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is

carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time student. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Federal Perkins loans, Defense loans, and Direct Loans made before October 1, 1980, and six months for other Direct loans.

***Institution of higher education (institution):** A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Making of a loan: When the borrower signs the promissory note for the award year and the institution makes the first disbursement of loan funds under that promissory note for that award year.

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

§ 674.5

34 CFR Ch. VI (7-1-97 Edition)

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.

Past-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.

Student loan: For this part means a Direct 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.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 52580, Dec. 28, 1988; 57 FR 32344, July 21, 1992; 59 FR 61404, 61415-61416, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996]

§§ 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) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with § 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(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 enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter 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) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the