

Perkins Loans Cancellation Reimbursements: What Colleges and Universities Need to Know

Background

The Federal Perkins Loan Program was the oldest federal student loan program, created in 1958 as the National Defense Student Loan Program.

The program created a partnership between colleges and universities and the federal government in which both parties contributed capital to campus revolving funds to generate student loans awarded and administered by institutions under terms set by federal law. Borrower repayments of principal and interest were added to these revolving funds and relented to subsequent generations of students.

The authorization for the program expired on Sept. 30, 2018, so no new Perkins Loans can be made after that date. Outstanding loans will continue to be serviced either by institutions or by the federal government.

As part of the wind-down of the program, colleges and universities are required by the Higher Education Act (HEA) to return the federal share of their revolving funds to the government. This process is set to begin as early as December 2018, when the Department of Education is expected to offer directions to institutions on how to manage the remainder of their Perkins revolving funds.

Perkins Loans Cancellations: What the Federal Government Owes Institutions

The Perkins Loans Program provided for the cancellation of outstanding balances for borrowers who met certain conditions related to working in public service or serving in the armed forces.

Because cancelling those loans eliminated the obligation for borrowers to repay, cancellations left a gap in the revolving funds used to generate new loans.

The HEA required the federal government to reimburse colleges and universities for the amount of those cancellations, keeping the revolving funds intact. This reimbursement consisted of both the federal and the institutional share of canceled loans.

Congress historically made annual appropriations to reimburse institutions for cancellations, separate from appropriations to increase the overall capital available to make new loans. Indeed, the HEA explicitly prohibits using appropriations for new capital to fund loan cancellations.

Starting in FY 2010, however, Congress stopped making appropriations to reimburse colleges and universities for cancellations. As a result, institutions are now owed over \$300 million for their share of cancelled loans that have not been reimbursed, as the law requires.

The Department of Education previously acknowledged their obligation to repay institutions but has claimed that Congress's ongoing failure to provide a specific appropriation prevents them from doing so. As part of the FY 2019 appropriations process, Congress included language directing the department to reimburse cancellation costs and allowed for the use of other appropriated funds for this purpose.

In addition, the Tucker Act (28 U.S.C. 1491) and subsequent case law is clear and explicit on the federal government's responsibility to repay institutions in these circumstances and allows for litigation to recover these funds.

If the department does not resolve the issue before that point, or delays the return of funds from schools until the matter is resolved, institutions will be required to return Perkins Loan funds to the federal government in excess of what they are legally permitted to retain.