

MEMORANDUM

Date: February 3, 2016

To: U.S. Department of Education

From: Eileen Connor and Noah Zinner

Issue: False Certification Discharge Regulatory Proposals (Proposals re Ability to Benefit Certification of Non-English Speaking Students in Separate Memo)

This memo describes the following proposals:

- (1) Electronic Forgery and Fraud: Update false certification discharge regulations to ensure that FFEL and Direct Loan borrowers whose schools electronically obtain loans or disbursements without borrower authorization are able to obtain discharges.
 - Proposed Language – Attachment A
- (2) False Certification of Satisfactory Academic Progress or High School Diploma: Expand FFEL and Direct Loan discharge eligibility to borrowers whose schools falsely certify the most commonly abused student eligibility criteria of 20 U.S.C. § 1091, including: (a) satisfactory academic progress; and (b) high school diploma before enrollment.
- (3) Fair Evidentiary Burdens for Borrowers Seeking Discharges Based on Ability-to-Benefit Fraud: Amend the FFEL and Direct Loan regulations to include evidentiary burdens that are fair to borrowers who seek discharges based on their school's false certification of their ability to benefit.
- (4) Group Eligibility for Discharges: Amend the FFEL and Direct Loan regulations to (a) specify certain circumstances in which the Department must provide group eligibility for discharge, including when there is evidence that a school has engaged in a practice of falsely certifying borrower eligibility; and (b) provide a procedure by which borrowers may use existing authority to seek group discharge eligibility determinations from the Department.
- (5) False Certification of Program Eligibility: Amend the Direct Loan regulations to provide false certification discharge eligibility for borrowers whose programs lack or lose Title IV eligibility.

Proposal No. (1): Update false certification discharge regulations to ensure that FFEL and Direct Loan borrowers whose schools electronically obtain loans or disbursements without borrower authorization are able to obtain discharges.

Currently, a borrower may seek a false certification discharge for forgery when a school has forged the borrower's name on a loan application, promissory note, loan check endorsement,

or authorization for an electronic funds transfer.¹ To obtain relief, the borrower must provide specimens of his or her ink signature.²

This focus on ink signatures is antiquated and ill-fitted to a loan system that is overwhelmingly electronic. The large majority of master promissory notes (“MPNs”) are now submitted and signed electronically and have been for many years.³ New MPNs are not required for subsequent loans made in a 12-month period for single-year schools.⁴ Similarly, new MPNs are not required for subsequent loans made within a ten-year period for multi-year schools.

Over the years the loan disbursement process from the lender/government to the school has moved from one involving paper checks to one involving electronic transfers. Rather than having a borrower endorse a check made out jointly to the school and the borrower, the school must obtain borrower “confirmation.” For additional loan disbursements made in a single academic year, no borrower confirmation is required. For loan disbursements in subsequent academic years on a multi-year Direct or FFEL Program MPN, the school may use an active or passive confirmation process. For Parent PLUS Loans, the confirmation process must be active.

In an active confirmation, the school and/or lender does not disburse the loan unless the borrower affirmatively requests or accepts the proposed loan type and amount. Passive confirmation only requires the school to notify the borrower of the loan to which the borrower must only respond if he or she wishes to reduce or decline the loan.

A school (and lenders in the FFEL program) is required to retain a description of the confirmation process for each academic year in which it makes a second or subsequent loans under an MPN. This documentation must be kept indefinitely so that it may be submitted to the Department in the event a borrower challenges the enforceability of the loan.

The Problem: This process, particularly the passive confirmation process for additional loan disbursements, makes it remarkably easy for schools to take out loans and disbursements

¹ 34 C.F.R. §§ 682.402(e)(1)(i)(B), (ii) (FFEL), 685.215(a)(1)(ii), (2) (Direct Loans).

² 34 C.F.R. §§ 682.402(e)(3)(iii), (iv) (FFEL) and 685.215(c)(2), (3) (Direct Loans).

³ Federal Student Aid Handbook at 8-41 (2013-2014) (hereinafter, “2013-14 FSA Handbook”); Dep’t of Educ., “Master Promissory Notes – MPN Basics at 1 (attachment to William Leith, Direct Loan Processing Information – Master Promissory Notes (Sept. 16, 2011)) (hereinafter, “MPN Basics”); Dep’t of Educ., Use of Electronic Signatures in the Federal Student Loan Programs, GEN-01-06 (May 2001).

⁴ 2013-14 FSA Handbook at 8-43; Federal Student Aid Handbook at 4-3 to 4-4 (2005-006) (hereinafter, “2005-06 FSA Handbook”). All the information in this proposal comes from the 2013-2014 and 2005-06 FSA Handbooks unless otherwise noted.

without borrower authorization. Legal services organizations see many clients who have been victims of this type of electronic fraud, but have no way to seek a discharge.

Here is a description of just one example from a legal aid office with a client who is a veteran. The student used his GI Bill funds to complete a two-year degree in TV and Film Editing. When he could not find a job, the school convinced him to enroll in another program, this one for Graphics, Animation and Effects. Because the student had used up his GI Bill funding, he applied for and electronically signed a Direct Loan MPN to fund the second program.

After the student completed his education, he received a letter from his servicer indicating that he borrowed over \$7,000 more than the school had disclosed he would be borrowing. The legal aid organization investigated and found that the \$7,000 had not been disbursed to the student, nor had it been credited towards tuition expenses because those expenses had been paid in full by prior loans. The legal aid organization submitted a forgery discharge application to the loan servicer on the student's behalf. The application was denied, even though the Department shut down the school and is now conducting a criminal investigation.

Proposal Description: We propose updating this category to ensure that FFEL and Direct Loan borrowers whose schools falsely certified their eligibility for Title IV loans by electronically obtaining loans or disbursements without the borrower's authorization are able to obtain false certification discharges.

Because the current system allows schools to obtain second and later disbursements on single- and multi-year MPNs without any affirmative borrower authorization (through "passive confirmation"), we propose that a borrower attestation under penalty of perjury that he or she did not authorize a loan or disbursement presumptively entitles him or her to a discharge. The Department could then rebut the presumption with evidence from the school showing that the borrower did in fact authorize the loan or disbursement, such as:

- Evidence that the borrower was notified of the disbursement or requested it;
- Evidence that the proceeds of the loan were credited to the borrower's account for tuition owed by the student; and
- If the school claims that proceeds were distributed to the student for non-tuition expenses, evidence that the school paid those proceeds to the student.

In the event that the Department obtains such records, the student should have the opportunity to provide his or her own evidence contradicting the school's evidence.

Proposed Language: Proposed language is included as Attachment A.

Proposal No. (2): Expand FFEL and Direct Loan discharge eligibility to borrowers whose schools falsely certify the most commonly abused student eligibility criteria of 20 U.S.C. § 1091, including: (a) satisfactory academic progress; and (b) high school diploma before enrollment.

Background: 20 U.S.C. § 1091 contains a large list of student eligibility criteria. We propose focusing on the two criteria that are most commonly abused by unscrupulous schools: (a) satisfactory academic progress and (b) high school diploma or equivalent before enrollment.

Legal services organizations see many clients whose satisfactory academic progress is falsely certified by their schools. Many of these students complete their educations, but are unable to obtain jobs in the occupations for which they trained because they do not have the necessary skills or knowledge.

In addition, as discussed in the first negotiated rulemaking session, schools are increasingly falsely certifying that borrowers have a high school diploma or equivalent when they do not. From July 2012 through June 2015, students without a high school diploma or equivalent could no longer become eligible for financial aid by passing an ATB test.⁵ Since July 2015, these students may be eligible only if they are enrolled in an eligible career pathway program.⁶ Despite this new avenue to financial aid eligibility for non-high school graduates, false certification of secondary credentials continues to be a problem at schools that do not offer eligible career pathway programs.

Some unscrupulous for-profit schools direct students who have not earned high school diplomas to fraudulent online diploma mills. These businesses typically administer an online multiple-choice test for a fee, and then provide a fake transcript and high school diploma that the school uses to qualify the students for federal aid.⁷ Many students do not understand that they need a high school diploma to qualify for federal aid, that the test is for obtaining a high school diploma, or that the diploma is invalid. Other schools, unbeknownst to the student, simply falsify the student's financial aid application by completing the application for the student with false high school diploma information. Just this week, on February 1, 2016, the Department announced enforcement actions against Marinello Beauty School campuses

⁵ Pub. L. No. 112-74, 125 Stat. 786 (Dec. 23, 2011).

⁶ P.L. 113-235, 128 Stat. 2130 (Dec. 16, 2014).

⁷ See Press Release, Fed. Trade Comm'n, [FTC Action Halts Online High School Diploma Mill That Made \\$11 Million Selling Worthless Diploma to Students](#) (Sept. 19, 2014).

throughout California and Nevada for precisely these sorts of violations.⁸

The current false certification regulations, however, may be read to suggest that discharges are permitted only when the school did not properly administer an ATB test.⁹ As a result, most students¹⁰ who enroll after July 1, 2012, and lack a high school diploma or equivalent, may not be eligible for this category of false certification discharge.

Students whose schools falsely certify that they have high school diplomas should not be precluded from obtaining loan discharges. Updates to the regulations are necessary both to deter and penalize this fraud by schools and to provide relief to defrauded students.

Examples: Unfortunately, legal aid organizations are seeing many students whose schools either inserted fake high school information into their financial aid application or instructed the students to “earn” high school diplomas by taking online tests offered by diploma mills. The Legal Aid Foundation of Los Angeles (LAFLA) currently has more than 20 clients who attended a school that did both – it directed the students to take online tests to earn high school diplomas on a school computer before they enrolled, and represented that these diplomas were legitimate. None of these students understood that a high school diploma was required to qualify for federal financial aid, nor did they understand that the tests they took were not legitimate. While these students enrolled before July 1, 2012 and are therefore currently eligible for false certification discharges, these students would not be eligible had they enrolled after that date.

Other examples include:

- FastTrain College allegedly enrolled 1,300 students who had not graduated from high school and were ineligible for federal aid by misrepresenting to the government that these students were high school graduates.¹¹ The school told these students that they did not need a diploma or that they could earn one while attending college.¹²
- Keiser University recruiters allegedly directed at least 74 students to obtain diplomas from an online diploma mill in 2010.¹³

⁸ Press Release, U.S. Dep’t of Educ., [U.S. Department of Education Takes Enforcement \(sic\) Against Two School Ownership Groups](#) (Feb. 1, 2016).

⁹ See 34 C.F.R. § 685.215.

¹⁰ Except for those who enroll in eligible career pathway programs on or after July 1, 2015.

¹¹ See David Halperin, [“For Profit-College Owner, Who Used Strippers as Lure, Goes on Trial,”](#) [www.huffingtonpost.com](#) (Oct. 20, 2015).

¹² *Id.*

¹³ Scott Travis, [Controversial High School Diplomas Create Turmoil at Keiser University](#), *Sun Sentinel* (Sept. 3, 2010).

- The proliferation of online high school diploma mills has led to a number of law enforcement actions against the companies that run them.¹⁴

Proposal No. (3): Amend the FFEL and Direct Loan regulations to include evidentiary burdens that are fair to borrowers who seek discharges based on schools' false certification of their ability to benefit.

The regulations provide that borrowers who lacked a high school diploma or equivalent are entitled to a discharge if their school falsified their ability to benefit from the program.¹⁵ While the Higher Education Act broadly authorizes the Department to grant a discharge whenever a student's eligibility to borrow has been falsely certified, the Department requires borrowers to present independent evidence to support their discharge application.¹⁶

Most students are only able to provide their own sworn statements that the school did not correctly assess their ability to benefit (ATB) according to the law. For example, some students who were victims of ATB fraud by the school have carried their debt for 20 to 30 years before being informed of their right to a false certification discharge. By this time, the original school is often long gone, closed due to its unscrupulous practices, and all key documents and "corroborating" evidence are destroyed. With no ability to meet the demanding evidentiary requirements, these students are permanently denied relief and must continue to bear the debt burden of a worthless education.

In a 1995 Dear Colleague Letter, the Department stated that an absence of findings of improper ATB practices by authorities with oversight powers "raises an inference that no improper practices were reported because none were taking place."¹⁷ The Department's reasoning is that responsible authorities should have discovered ATB fraud, and the fact that these agencies did not issue such a report implies that no ATB fraud occurred. But many borrowers cannot provide proof of federal or state investigations of particular schools because enforcement has been so lenient in this area that no such investigations exist. In fact, Congress in 1992 provided for the false-certification discharge and overhauled the student loan system because such supervising authorities had failed to do their job.¹⁸

¹⁴ See, e.g., Holly K. Hacker, [Dallas-Forth Worth Schools Accused of Being "Diploma Mills,"](#) The Dallas Morning News (Aug. 18, 2015); Fed. Trade Comm'n, Press Release, [FTC Action Halts Online High School Diploma Mill That Made \\$11 Million Selling Worthless Diplomas to Students](#) (Sept. 19, 2014); Jorgen Wouters, [School's Out for Texas Diploma Mill,](#) www.dailyfinance.com (Oct. 22, 2010).

¹⁵ 20 U.S.C. § 1087(c); 34 C.F.R. §§ 682.402(e)(1)(i)(A) (FFEL), 685.215(a)(1)(i) (Direct Loans).

¹⁶ U.S. Dep't of Educ., Dear Colleague Letter Gen 95-42, (Sept. 1995).

¹⁷ *Id.*

¹⁸ Abuses in Federal Student Grant Programs: Hearings Before the Permanent Subcomm. on Investigations of the Comm. on Governmental Affairs, 103d Cong. S. Hearing 103-491 (Oct. 1993).

If a borrower is unable to provide investigative findings, the Department or the guaranty agency will deny the discharge unless the borrower submits additional corroborating evidence. Corroborating evidence may include statements by school officials or rely on statements made in other borrower claims for discharge relief.¹⁹ Moreover, although a 2007 Dear Colleague Letter requires guaranty agencies to consider “the incidence of discharge applications filed regarding that school by students who attended the school during the same time frame as the applicant,”²⁰ students have no way of knowing whether a guaranty agency has done so in evaluating their applications.

Borrowers rarely have access to school employee statements and do not know whether other borrowers have filed similar claims for relief. When borrowers are able to find attorneys to help them, attorneys are often unable to obtain the required evidence through Freedom of Information Act requests. The Department does not have possession of all false certification discharge applications and does not ensure that copies are retained when guaranty agencies go out of business. Nor does it retain all evidence that could serve as corroborating evidence.²¹

As just one example, a legal aid organization has several clients whose ability to benefit was falsely certified by Meadows Business College. In order to obtain the required corroborating evidence, the legal aid organization requested that the Department provide a copy of all prior false certification discharge (ATB) applications. In response, the Department stated that 85 discharge applications had been submitted by Meadows Business College students, but it could only provide a copy of 13. The other 72 had been processed by the California Student Aid Commission or EdFund. CSAC ended its guaranty agency responsibilities in the 1990s, passing those responsibilities and loan documents to EdFund. In 2010, EdFund went out of business and transferred its guaranty responsibilities to ECMC. The Department does not know whether those records are now retained by ECMC. And, as a private entity, ECMC has no obligation to provide those records directly to borrowers pursuant to the Freedom of Information Act.

Finally, the 2007 letter provides that in the absence of any other evidence of ATB fraud, evidence of withdrawal rates exceeding 33 percent at the school at the relevant time, or specified excessive loan default rates, should be given “heightened weight.” Students also have no way of knowing whether a guaranty agency considers this information, nor are they

¹⁹ U.S. Dep’t of Educ., Dear Colleague Letter Gen 95-42, (Sept. 1995).

²⁰ U.S. Dep’t of Educ., Dear Colleague Letter FP-07-09 (Sept. 20, 2007).

²¹ A legal aid organization has submitted a FOIA request to the Department regarding its document retention policies. The Department did not provide any records in response to this request. The legal aid organization submitted an administrative appeal which has been pending for over a year.

able to easily access school withdrawal rates or older loan default rates to support their applications.

Proposal: The Department should specify in regulation that a borrower who submits a sworn statement, signed under penalty of perjury, establishing the borrower's eligibility for a false certification discharge is presumptively eligible for discharge. Once presumptive eligibility is established based on a borrower's application, the burden should then shift to the Department (or guaranty agency/lender) to disprove the borrower's eligibility. Absent any evidence specifically contradicting the borrower's sworn statement or disputing the borrower's credibility, the regulations should specify that the Department must grant the discharge. The regulations should clarify this evidentiary standard.

Borrowers should also be presumptively eligible for discharge in the following circumstances:

- The school's academic and financial aid files do not include a copy of test answers and results showing that the borrower obtained a passing score on an ability-to-benefit test approved by the Secretary;
- No testing agency has registered a passing score on an ability-to-benefit test approved by the Secretary for the borrower; or
- The school directed the borrower to take an online test to obtain a high school degree, the borrower believed the test to be legitimate, and the high school diploma is invalid;

This is fair and efficient for the reasons described above. Borrowers do not typically have access to government, accrediting agency, or other findings or audits regarding compliance with ATB requirements. In addition, a lack of such evidence does not mean that ATB violations did not occur, as the Department has not conducted ATB audits of every single school on a regular basis. Borrowers do not know whether other borrowers who attended the same campus have submitted similar false certification applications. And the Department has not ensured that schools, state agencies or guaranty agencies maintain records regarding ATB compliance.

In addition, the regulations could impose a presumption that false certification discharges be granted when there is evidence that the school likely engaged in ATB fraud. This evidence could include the following, which is not an exhaustive list:

- A federal or state agency, or an accrediting agency, recorded findings of ability-to-benefit violations at the borrower's campus within three years before or three years after the date the borrower enrolled;
- A state attorney general obtained a judgment based in part on allegations or evidence of ability-to-benefit violations during the time period within which the borrower enrolled;

- A federal agency made findings that the testing agency did not adequately oversee schools' administration of its ability-to-benefit test within three years before or three years after the date the borrower enrolled;
- A manager or director of the borrower's campus or of the entity that owned the campus was convicted of violating student eligibility provisions of the Higher Education Act or regulations thereunder;
- Ten or more borrowers who attended the same campus as the borrower, within three years before or three years after the borrower enrolled, have submitted false certification discharge applications to the Department, a guaranty agency, or a lender;
- Ten or more borrowers who attended the same campus as the borrower, within three years before or three years after the borrower enrolled, have submitted complaints to a state or federal agency alleging ability-to-benefit violations;
- One or more former or current school employees have stated that the school engaged in ability-to-benefit violations within three years before or three years after the borrower enrolled;
- The school had a withdrawal rate of 33% or higher when the borrower enrolled; or
- The school had a high loan default rate based on the borrower's repayment cohort.

Proposal No. (4): Amend the FFEL and Direct Loan regulations to a) specify certain circumstances in which the Department must provide group eligibility for discharge, including when there is evidence that a school has engaged in a practice of falsely certifying borrower eligibility; and (b) provide a procedure by which borrowers may use existing authority to seek group discharge eligibility determinations from the Department.

The Department underutilizes its existing authority to certify groups of borrowers as eligible for false certification discharges.²² As a result, even when the Department has evidence that a school has engaged in a practice of falsely certifying student eligibility, the Department does not provide automatic relief to those students or even notify the cohort of the possible relief. Further, under current practice, even if a borrower in the cohort learns about relief, the Department requires that each borrower must obtain and present evidence to support his or her individually attested discharge application.

We propose that the regulations be amended to include circumstances in which the Department would certify the eligibility of groups of borrowers for discharges. Such circumstances could include a large number of discharge applications from borrowers who attended the same school and who attest to similar ATB testing violations or findings by the Department or other government agency that a school has engaged in widespread ATB violations.

²² 34 C.F.R. §§ 682.402(e)(15), 685.215(c)(7); U.S. Dep't of Educ., Dear Colleague Letter Gen 95-42, (Sept. 1995).

Although the Department has used its authority to do this in the past, there is no current regulatory standard or process describing when the Department should consider providing group discharge eligibility. The regulations should also be amended to include a procedure allowing borrowers and their advocates to present evidence to the Department and seek a determination of group eligibility for false certification discharges. The proposed regulation would ensure that there is a standard and fair process for such group relief.

Proposal No. (5): Amend the Direct Loan regulations to provide false certification discharge eligibility for borrowers whose programs lack or lose Title IV eligibility.

At the first negotiated rulemaking session, the Department stated that it does not believe it has the authority under the Higher Education Act (HEA) to grant false certification discharges based on program eligibility. The only support the Department cited for this position is its own prior interpretation of the HEA in the 1994 NPRM. The legislative history of the HEA, however, does not appear to support or mandate the Department's narrow interpretation.

For a student to be eligible for Title IV aid, he or she must be enrolled in an eligible program. An "eligible student" is defined as a "regular student enrolled, or accepted for enrollment, *in an eligible program* at an eligible institution . . ." ²³ If a school falsely certifies a program's eligibility, then it also falsely certifies a student's eligibility.

Whenever a program is not eligible or loses its eligibility, students enrolled in that program should be eligible for false certification. For example, the gainful employment regulation requires schools to certify that their programs have the necessary programmatic accreditation for graduates to sit for licensing exams required for employment in the field. Students enrolled in programs whose programmatic accreditation is falsely certified are clearly victims of false certification and should be eligible for false certification discharges. ²⁴

During the negotiated rulemaking for the gainful employment regulations, the Department considered providing debt relief to students who were unable to complete their education in a program that loses its federal financial aid eligibility due to failing the gainful employment metrics. Although the Department did not include provisions addressing this issue in the final gainful employment regulations, it did state that it was open to considering options that

²³ 34 C.F.R. § 668.32(a)(1)(i) (emphasis added).

²⁴ For gainful employment programs, schools are required to certify, for the state(s) from which they is required to obtain authorization, that each "program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter." 34 C.F.R. § 668.414.

would address borrower relief concerns.²⁵ This is the Department's opportunity to ensure that students who enroll in programs that lose eligibility or that lack programmatic accreditation necessary for employment receive relief.

²⁵ 70 Fed. Reg. 16426, 16471 (Mar. 25, 2014).

Attachment A
False Certification Discharges for Electronic Forgeries/Fraud by School

Direct Loans: Amend 34 C.F.R. § 685.215 as follows:

(a) Basis for discharge—

(1) False certification. The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school— . . .

(ii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization; . . .

(2) Unauthorized payment. The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check-~~or~~, signed the borrower's authorization or electronic funds transfer, *or received a loan disbursement*, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school. . . .

(c) Borrower qualification for discharge. In order to qualify for discharge under this section, the borrower must submit to the Secretary a written request and a sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower must meet the requirements in paragraphs (c)(1) through (6) of this section. . . .

(2) Unauthorized loan. In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must—

(i) *For a loan application or promissory note that was not submitted electronically, S*state that he or she did not sign the document in question or authorize the school to do so; and *provide(ii) Provide* five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(ii) *For a loan application or promissory note that was submitted electronically, state that he or she did not sign or authorize the document in question, and the proceeds of*

the loan were not delivered to him or her or applied to charges owed to the school. The Department shall grant a discharge based upon this statement unless the school provides evidence showing that—

- (A) the borrower authorized the submission of the electronic loan application or promissory note;*
- (B) the school authenticated the borrower's identity and any electronic signature may reasonably be attributed to the student; and*
- (C) the proceeds of the loan were delivered to the student and/or applied to charges owed by the student.*

(3) Unauthorized payment. In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check, ~~or~~ signed the borrower's authorization for electronic funds transfer, *or received a loan disbursement*, the borrower must—

(i) For an unauthorized loan check endorsement or electronic funds transfer, State state that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so; (ii) Provide provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature; and (iii) State state that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(ii) For an unauthorized electronic loan disbursement, state that he or she did not authorize the loan disbursement and the proceeds of the loan were not delivered to him or her or applied to charges owed to the school. The Department shall grant a discharge based upon this statement unless the school provides evidence showing that—

- (A) the borrower affirmatively confirmed the amount and type of loan or disbursement; and*
- (B) the proceeds of the disbursement were delivered to the borrower or applied to charges owed by the borrower.*

(d) Discharge procedures. . . .

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination. *If the Department denies a discharge application submitted pursuant to paragraph (c)(2)(ii) or (c)(3)(ii), it must provide the borrower with the evidence upon*

which it relied. The Department shall reverse its denial if the borrower provides any evidence contradicting the evidence relied upon by the Department for any one of subsections (A) through (C) of paragraph (c)(2)(ii) or for either subsection (A) or (B) of paragraph (c)(3)(ii).

FFEL Loans: Amend 34 C.F.R. § 682.402(e) similarly.