

Issue Paper 11
Session 2: February 17-19, 2016

- Issue:** Whether to revise the closed school discharge regulation to ensure borrowers are aware of and utilize their ability to receive a closed school discharge
- Statutory Cite:** Section 437(c) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087(c)
- Regulatory Cite:** Section 674.33(g), Section 682.402(d), Section 685.214(f), Section 668.14(b)
- Summary of Issue:** Many borrowers eligible for a closed school discharge under Section 437(c) of the HEA do not apply. There are concerns that borrowers are unaware of their possible eligibility for discharge because of a lack of outreach and information about available relief, or that borrowers are not informed by the closing school about the option for discharge alongside the ability to attend a teach-out. Currently, the Secretary sends identified eligible borrowers an application and an explanation of qualification and procedures to obtain a discharge. Schools also conduct teach-outs in accordance with their accreditor's standards. Further, under FFEL program regulations, a borrower cannot request a review of guaranty agency determinations of a borrower's eligibility for a closed school discharge by the Secretary. By amending the regulations to provide for more outreach, disclosure of a borrower's options in a teach-out situation, and review by the Secretary of guaranty agency determinations, we hope to increase the uptake of borrowers who apply and receive a closed school discharge.
- Proposed Changes:** See attached regulatory text.

§668.14 Program participation agreement.

(b) ***

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34

CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under §668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations; and

(32) Upon submission of a teach-out plan to its accrediting agency in accordance with paragraph (b)(31) of this section, under which the institution proposes to complete education for currently enrolled students either at another campus of the institution or by arrangement with another institution, the institution will provide all enrolled students with a closed school discharge application and must disclose to all enrolled students that they may seek a closed school discharge as an alternative to the teach-out.

§682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments

(d) *Closed School*—

(6)(ii)(A)

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section has satisfied all of the conditions required for a discharge, the agency shall notify the borrower in writing of that determination within 30 days after making that determination.

(H) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination, the reasons for the determination, of the opportunity for review by the Secretary, and

an explanation of the manner in which to request such a review, within 30 days after the date the agency—

(1) Made that determination based on information available to the guaranty agency;

(2) Was notified by the Secretary that the school had not closed;

(3) Was notified by the Secretary that the school had closed on a date that was more than 120 days after the borrower (or student) withdrew from the school;

(4) Was notified by the Secretary that the borrower (or student) was ineligible for a closed school discharge for other reasons; or

(5) Received the borrower's completed application and sworn statement.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(J) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(K) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.*

(i) Within 30 days after receiving the borrower's request for review under paragraph (d)(6)(ii)(H) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for review.

(ii) The Secretary notifies the agency and the borrower of a determination upon review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within

30 days after being so informed, the agency shall take the actions described in paragraph (d)(5)(i) (I) or (d)(6) (ii) (I), as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraphs (d)(6) and (d)(7) of this section, as applicable.

§ 685.214 Closed school discharge.

(f) *Discharge procedures.*

(1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 120 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (f)(2) of this section.

(4) If a borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants

forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(6) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(7) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that determination and the reasons for the determination.