

Issue Paper 4
Session 2: February 17 -19, 2016

Issue: Update and expand the existing categories of false certification discharges

Statutory cites: §§437(c) and 484(d) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1087(c) and 1091(d)

Regulatory cites: 34 CFR 685.215

Summary of change:

The proposed regulations would:

Revise §685.215(a) of the Direct Loan regulations to eliminate the need to update the false certification discharge regulations each time Congress amends section 484(d) of the HEA (establishing student eligibility requirements for students without high school diplomas or a recognized equivalent to qualify for Title IV aid).

Expand §685.215(a)(1) to specify that a borrower may receive a false certification discharge if the school has falsified the student's high school graduation status.

Changes: See attached regulatory text (proposed changes to existing regulatory text redlined).

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

§685.215 Discharge for false certification of student eligibility or unauthorized payment.

(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—

(i) Certified the eligibility of a student who

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act that were in effect at the time of certification; or

(ii) Certified the eligibility of a student who is not a high school graduate based on a high school diploma falsified by the school, or by a third party under an arrangement with the school;

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

(iv) Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; or

(v) Certified the individual's eligibility for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(5)(ii) of this section.

(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 for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.* (1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

(3) The discharge under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the discharged loan or payment.

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* To qualify for discharge under this section, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraphs (c) (1) through (7) of this section have been met.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act applicable at the time the loan was originated, or where the school or a third party under arrangement with the school falsified the student's high school diploma, the borrower must state in the application that that the borrower (or the student on whose behalf a parent borrowed)—

- (i) Received a disbursement of a loan, in whole or in part, on or after January 1, 1986 to attend a school;
- (ii) Did not have a valid high school diploma at the time the loan was certified; and
- (iii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable at the time the institution certified the loan.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan)—

- (i) Received, on or after January 1, 1986, the proceeds of any loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school; and
- (ii) Did not meet State requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower an 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.

(2) If the borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the 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.

(3) If the borrower submits the application described in paragraph (c) of this section, the Secretary determines whether to grant a request for discharge under this section by reviewing the application in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(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.

