

MEMORANDUM

Date: March 4, 2016

To: U.S. Department of Education

From: Eileen Connor and Noah Zinner, Negotiators for Legal Assistance Organizations That Represent Consumers

Re: Unpaid Refund Discharge Proposal

On February 3, we proposed that the Department amend the FFEL Loan regulations to provide for Department review of guaranty agency denials of closed school and unpaid refund discharge applications. While the Department agreed with and proposed language to implement the closed school discharge proposal, it did not address our unpaid refund discharge proposal.

We therefore are re-proposing that the Department provide the same appeal rights to borrowers whose unpaid refund discharges are denied by guaranty agencies and refer to the memo of February 3 regarding the reasons for this proposal. We propose the following amendment to the regulations.

34 C.F.R. § 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments

(I) Unpaid refund discharge.

(5)(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge or determines that the borrower is qualified for an unpaid refund discharge in an amount that is less than the borrower requested, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge or that the borrower qualifies for a discharge that is less than the borrower requested)—

(A) Within 30 days of the guarantor's determination, the agency must notify the borrower in writing of the reason for the determination, of the opportunity for review by the Secretary, and an explanation of the manner in which to request such a review ~~and of the borrower's~~

~~right to request a review of the agency's determination. The guaranty agency must make a determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in any prior determination. During the review period, collection activities must be suspended;~~

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

(1) Within 30 days after receiving the borrower's request for review under paragraph

(1)(5)(vii)(A) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for review. During the review period, collection activities must be suspended.;

(2) The Secretary notifies the agency and the borrower of a determination upon review.

(3) If the Secretary determines that the borrower is not eligible for a discharge under paragraph (1) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraph (c)(5)(vii)(C).

(3) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (1) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraphs (1)(1), (1)(2), and (1)(3) of this section, as applicable..and

(BC) The holder must resume collection if ~~the determination~~ *a determination that the borrower is not eligible for an unpaid refund discharge* remains unchanged and grant forbearance of principal and interest for any period during which collection activity was suspended under this section. The holder may capitalize any interest accrued and not paid

during these periods in accordance with § 682.202(b).

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