



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

**Proposed Regulatory Text for Issue Paper #11: False Certification Discharge
Session Three: December 6 -10, 2021**

Part 682—Federal Family Education Loan (FFEL) Program

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

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(e) *False certification by a school of a student's eligibility to borrow and unauthorized disbursements - (1) General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. On or after July 1, 2006, the Secretary reimburses the holder of a loan, and discharges a borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's eligibility to receive the loan was falsely certified as a result of a crime of identity theft. For purposes of a false certification discharge, the term "borrower" includes all endorsers on a loan.

(ii) A student's or other individual's eligibility to borrow shall be considered to have been falsely certified by the school if the school -

(A) Certified the eligibility for a FFEL Program loan of a student who—

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

(2) Did not satisfy the alternative to graduation from high school requirements under 34 CFR part 668.32(e) and section 484(d) of the Act that were in effect at the time the loan was certified, as applicable.

(B) Certified the eligibility of a student who is not a high school graduate based on—

(1) A high school graduation status falsified by the school; or

(2) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(C) Certified the eligibility of the 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 certified) in the occupation for which the training program supported by the loan was intended;

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

(E) Certified the eligibility of an individual for a FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in § 682.402(e)(14).

(iii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(iv) If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower -

(A) The Secretary does not pay reinsurance, and does not reimburse the holder, for any amount disbursed on the loan; and

(B) Any amounts received by a holder as interest benefits and special allowance payments with respect to the loan must be refunded to the Secretary, as provided in paragraphs (e)(8)(ii)(B)(4) and (e)(10)(ii)(D) of this section.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (e)(1)(ii) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was, otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse or inaccurate credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(iii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (e)(15) of this section, to qualify for a discharge of a loan under paragraph (e) of this section, the borrower must submit to the holder of the loan 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 must -

(i) State whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) 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 and 34 CFR part 668.32(e) applicable when the loan was certified, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that - the borrower (or the student for whom a parent received a PLUS loan) -

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school; and

(B) Reported not having a valid high school diploma or its equivalent when the loan was certified; and

(C) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was certified.

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(iii) 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) 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.

(iv) 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 State that he or she did not sign the document in question or authorize the school to do so.

(v) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower must (A) State that he or she did not endorse the

loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so.and

(B) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student;

(vi) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge -

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual; and

(C) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that the individual's eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(1) A judicial determination of identity theft relating to the individual;

(2) A Federal Trade Commission identity theft affidavit;

(3) A police report alleging identity theft relating to the individual;

(4) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and(5) Other evidence acceptable to the Secretary.

(vii) That the borrower agrees to provide upon request by Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(viii) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (e) of this

section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall -

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who -

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (e) of this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of paragraph (e) of this section apply notwithstanding any provision of state law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Discharge procedures - general.* (i) If the holder of the borrower's loan determines that a borrower's FFEL Program loan may be eligible for a discharge under this section, the holder provides the borrower the application described in paragraph (e)(3) of this section and an explanation of the qualifications and procedures for obtaining a discharge. The holder also promptly suspends any efforts to collect from the borrower on any affected loan. The holder may continue to receive borrower payments.

(ii) If the borrower fails to submit the application for discharge and supporting information described in paragraph (e)(3) of this section within 60 days of the older providing the application, the

holder resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iii) If the borrower submits an application for discharge that the holder determines is incomplete, the holder notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the holder the borrower's application is closed as incomplete and the holder resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iv) If the borrower submits a complete application described in paragraph (e)(3) of this section, the holder files a claim with the guaranty agency no later than 60 days after the holder receives the borrower's complete application.

(v) The guaranty agency determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the guaranty agency's records and gathered by the guaranty agency from other sources, including the Secretary, other guaranty agencies, Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations.

(vi) The guaranty agency issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency considers any response from the borrower and any additional information from the borrower and notifies the borrower whether the determination is changed.

(vii) If the guaranty agency determines that the borrower meets the applicable requirements for a discharge under paragraph (e) of this section, the guaranty agency notifies the borrower in writing of that determination.

(viii) If the guaranty agency determines that the borrower does not qualify for a discharge, the guaranty agency notifies the borrower in writing of that determination and the reasons for the determination.

(ix) If the guaranty agency determines that the borrower does not qualify for a discharge, the borrower may request that the Secretary review the guaranty agency's decision.

(x) A borrower is not precluded from re-applying for a discharge under paragraph (e) of this section if the discharge request is closed as incomplete, or if the guaranty agency or Secretary determines that the borrower does not qualify for a discharge, if the borrower provides additional supporting evidence.

(7) Guaranty agency responsibilities - general. (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility

and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under paragraph (e) of this section, the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the application described in paragraph (e)(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.

(iv) If the borrower submits an application for discharge that the guaranty agency determines is incomplete, the guaranty agency notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the guaranty agency the borrower's application is closed as incomplete and the guaranty agency resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(v) Upon receipt of a discharge claim filed by a lender or a complete application submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the borrower's application in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations.

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

(8) Guaranty agency responsibilities with respect to a claim filed by a lender based on the borrower's assertion that he or she did not sign the loan application or the promissory note that he or she was a victim of the crime of identity theft, that he or she reported not having a valid high school diploma or its equivalent when the loan was certified and did not satisfy the alternative to graduation from high school eligibility requirements or that he or she had a disqualifying condition. (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(8) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with § 682.402(h) and -

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must -

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination -

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower -

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iii)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iii)(B) of this section.

(9) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(9) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it shall, within 30 days after making that determination -

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(9)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must -

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(3) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount; and

(4) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with § 682.402(h) and -

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(9)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must -

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination -

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(9)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower -

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(9)(iv)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(vii) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(9)(iv)(B) of this section.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based on the borrower's assertion that he or she did not sign the loan application or the promissory note, that he or she was a victim of the crime of identity theft, that he or she reported not having a valid high school diploma or its equivalent when the loan was certified and did not satisfy the alternative to graduation from high school eligibility requirements or that he or she had a disqualifying condition.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(10) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge -

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower -

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(11) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(11) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(11)(ii)(D)(2) of this section, and within 30 days after making that determination -

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days -

(1) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(2) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(11)(ii)(C) of this section that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(11)(ii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination -

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(10) (iii) through (v) if the agency determines that the borrower does not qualify for a discharge.

(12) *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 (e)(8)(iii)(B)(2), (e)(9)(iv)(B)(2), (e)(10)(iii)(B), or (e)(11)(iv) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (e) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraphs (e)(9) (iv) through (vii) or (e)(10)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(8)(ii), (e)(9)(ii), (e)(9)(iii), (e)(10)(ii), (e)(11)(ii), or (e)(11)(iii) of this section, as applicable.

(13) *Lender Responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under paragraph (e) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the application described in paragraph (e)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) If the borrower submits an application for discharge that the lender determines is incomplete, the lender notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the lender the borrower's application is closed as incomplete and the lender resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iv) The lender shall file a claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives the borrower's complete application described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment

to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(v) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under paragraph (e) of this section.

(vi) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(9)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(iii). If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan, and may file a claim with the guaranty agency for reimbursement on that ground, but shall not report the loan to consumer reporting agencies as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following -

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(9)(ii)(B) of this section.

(vii) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

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(14) *Definition of Identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to -

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(15) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the Secretary, or the guaranty agency with the Secretary's permission, determines based on information in the Secretary's or the guaranty agency's possession that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in §668.34(16) A state Attorney General or non-profit legal services representative may submit to the Secretary an application for a group discharge under this section.

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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 proceeds of a Direct 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 and 34 CFR part 668.32(e) that were in effect when the loan was originated;

(ii) Certified the eligibility of a student who is not a high school graduate based on -

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

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

(iv) Certified the eligibility of the 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 eligibility of a student 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)(6) 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.

(3) *Loan origination.* For purposes of this section, a loan is originated when the school submits the loan record to the Department's Common Origination and Disbursement (COD) System. Before originating a Direct Loan, a school must determine the student's or parent's eligibility for the loan. For each Direct Loan that a school disburses to a student or parent, the school must first submit a loan award record to the COD system and receive an accepted response.

(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 paragraph, 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 paragraph (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(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 and 34 CFR part 668.32(e) applicable when the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan) -

(i) Reported not having a valid high school diploma or its equivalent when the loan was originated; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was originated.

(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) 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.

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(3) *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 state that he or she did not sign the document in question or authorize the school to do so.

(4) *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, the borrower must -

(i) 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; and

(ii) 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.

(5) *Identity theft.* In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must -

(i) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(ii) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual; **and**

(iii) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(A) A judicial determination of identity theft **relating to the individual;**

(B) A Federal Trade Commission identity theft affidavit;

(C) A police report alleging identity theft **relating to the individual;**

(D) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(E) Other evidence acceptable to the Secretary.

(6) *Definition of identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to -

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(7) *Claim to third party.* The borrower must state whether the borrower (or student) has made a claim with respect to the school's false certification or unauthorized payment with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation.

(8) *Cooperation with Secretary.* The borrower must state that the borrower (or student) -

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.214(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.214(e).

(9) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in § 668.34.

(10) A state Attorney General or non-profit legal services representative may submit to the Secretary an application for a group discharge under this section.

(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 for discharge and supporting information 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.

(3) If the borrower submits an application for discharge that the Secretary determines is incomplete, the Secretary notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the Secretary the borrower's application is closed as incomplete and the Secretary resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(4) If the borrower submits a completed application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, other Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The Secretary considers any response from the borrower and any additional information from the borrower, and notifies the borrower whether the determination is changed.

(5) 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.

(6) 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.

(7) A borrower is not precluded from re-applying for a discharge under paragraph (c) of this section if the discharge request is closed as incomplete, or if the Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

