

**MEETING 2
FEBRUARY 13-17, 2012**

**Issue Paper #13
Proposed Regulatory Language
Loans Group**

Issue: Total and Permanent Disability Discharge: Single Application Process

Statutory Cites: §§437(a), 464(c)(1)(F), and 464(k)

Regulatory Cites: §§674.61(b), 682.402(c), 682.402(g), 682.402(h), 682.402(k), 682.402(r), 685.213, and 686.42(B)

Summary of Change: Revised Perkins and FFEL regulations to provide for direct application to the Department of Education for total and permanent disability discharge requests.

Change: See "Proposed Regulatory Language for Issue Papers 13, 14, and 15"

**Issue Paper #14
Proposed Regulatory Language
Loans Group**

Issue: Total and Permanent Disability Discharge: Borrower Notification of Denial

Statutory Cites: §§437(a), 464(c)(1)(F), and 464(k)

Regulatory Cites: §§674.61(b)(3)(ii), 682.402(c)(3)(iii), and 685.213(b)(2)(iii)

Summary of Change: Modified regulations in the Perkins, FFEL, and Direct Loan program to provide more detailed information to borrowers in the TPD denial letters.

Change: See "Proposed Regulatory Language for Issue Papers 13, 14, and 15"

**Issue Paper #15
Proposed Regulatory Language
Loans Group**

Issue: Total and Permanent Disability Discharge: Post-Discharge Monitoring of Employment Earnings

Statutory Cites: §§437(a), 464(c)(1)(F), and 464(k)

Regulatory Cites: §§674.61(b)(5)(i), 682.402(c)(5)(i)(A), and 685.213(b)(4)(i)(A)

Summary of Change: Modified Perkins, FFEL, and Direct Loan regulations to conduct post-discharge income monitoring on a calendar-year basis, beginning with the first complete calendar year after the Department grants a total and permanent disability discharge.

Change: See "Proposed Regulatory Language for Issue Papers 13, 14, and 15."

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**Proposed Regulatory Language
for Issue Papers 13, 14, and 15
Loans Group**

Change:

§ 674.61 Discharge for death or disability

(b) *Total and permanent disability as defined in §674.51(aa)(1)* —(1) *General.* (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in §674.51(aa)(1), and satisfies the additional eligibility requirements ~~contained~~ in this section.

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~~(ii) For purposes of §674.61(b), a borrower's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge request.~~

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(2) *Discharge application process for borrowers who have a total and permanent disability as defined in §674.51(aa)(1).* (i) ~~If the borrower or the borrower's representative notifies the institution that the borrower claims to be totally and permanently disabled as defined in §674.51(aa)(1), the institution must—~~

~~(A) Direct the borrower to submit an application for total and permanent disability discharge to the Secretary; and~~

~~(B) Grant a forbearance to the borrower in accordance with §674.33(d)(5)(ii). The forbearance period may not exceed 90 days.~~

~~(ii) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in §674.51(aa)(1), a The borrower or borrower's representative must submit to the Secretary an application for total and permanent disability discharge discharge application on a form approved by the Secretary, to the institution that holds the loan.~~

~~(iii)-(iii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in §674.51(aa)(1).~~

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~~(iv) The borrower or borrower's representative must submit the application described in paragraph (b)(2)(ii) of this section to the Secretary within 90 days of the date the physician certifies the application.~~

~~(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.~~

~~(v) After the Secretary receives the application described in paragraph (b)(2)(ii) of this section, the Secretary identifies any other title IV loans owed by the borrower and notifies the borrower and the holders of the loans that the borrower has applied for a disability discharge on those loans.~~

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~~(vi) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.~~

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(vii) The lender notification described in paragraph (b)(2)(v) of this section directs the borrower's loan holders to suspend collection activity on the borrower's title IV loans.

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(viii) The borrower notification described in paragraph (b)(2)(v) of this section —

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(A) States that the application will be reviewed by the Secretary;

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(B) Informs the borrower that the borrower's lenders will suspend collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

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(C) Explains the process under paragraph (b)(3) of this section for the Secretary's review of total and permanent disability discharge applications.

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(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that —

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in §674.51(aa)(1);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is totally and permanently disabled; and

(C) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled, as defined in §674.51(aa)(1), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower —

(1) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

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(2) Receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

(3) Fails to ensure that the full amount of any disbursement of a Title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(33) Secretary's *eligibility determination review of the total and permanent disability discharge application*. (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification supports the conclusion that the borrower is totally and permanently

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disabled as defined in §674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in §674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

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(iii) the Secretary discharges the borrower's obligation to make further payments on the loan, and After determining that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary, that the loan has been discharged.

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(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(56) of this section. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

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(#v) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in §674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note;

(C) An explanation that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation of how the borrower may request that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation of how the borrower may submit a new application for total and permanent disability discharge if the borrower does not request re-evaluation of the borrower's prior discharge application within the timeframe specified by the Secretary.

(vi) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling

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condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(iii) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in §674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(4) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

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(5) Application for new title IV loans or TEACH Grants after the date of the physician's certification. If a borrower initiates an application for a new title IV loan or TEACH Grant on or after the date the physician certified the borrower's discharge application, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loans.

(4) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a Title IV loan or TEACH Grant prior to the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates ~~at the~~ borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(iii) of this section if ~~, within three years after the date the Secretary granted the discharge, the borrower~~

(A) During the three calendar year period beginning on January 1 of the first calendar year after the date the Secretary granted the discharge, the borrower ~~H~~has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

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(B) During the period from the date the Secretary granted the discharge until the end of the three calendar year period specified in paragraph (b)(6)(i)(A) of this section, the borrower receives a new TEACH Grant or a new loan under the Perkins, ~~FFEL~~ or Direct Loan programs, except for a ~~FFEL or~~ Direct Consolidation Loan that includes loans that were not discharged; or

(C) The borrower ~~f~~ails to ensure that the full amount of any disbursement of a ~~T~~title IV loan or TEACH Grant received prior to the discharge date that is made during the period from the date the Secretary granted the discharge until the end of the three calendar year period specified in paragraph

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(b)(6)(i)(A) of this section is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(~~56~~)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

~~(67)~~ *Borrower's responsibilities after a total and permanent disability discharge.* During the ~~three-year~~ periods described in paragraphs (b)(~~56~~)(i)(A) and (b)(6)(i)(B) of this section, the borrower or, if applicable, the borrower's representative must—

(i) ~~Must pp~~ promptly notify the Secretary of any changes in address or phone number;

(ii) ~~Must pp~~ promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(~~56~~)(i)(A) of this section; and

(iii) ~~Must pp~~ provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

~~(78)~~ *Payments received after the physician's certification of total and permanent disability.* (i) If ~~after the date the physician certifies the borrower's loan discharge application,~~ the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was has been assigned to the Secretary ~~for~~based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must ~~forward those payments to the Secretary for crediting to the borrower's account~~return the payments to the sender.

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(ii) At the same time that the institution ~~forwards~~returns the payments, it must notify the borrower that there is no obligation to make payments on the loan ~~prior to the Secretary's determination of eligibility for~~after it has been discharged due to a total and permanent disability ~~discharge, unless unless~~the loan is reinstated in accordance with §674.61(b)(6), or the Secretary directs the borrower otherwise.

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(iii) When the Secretary ~~makes a determination to~~ discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the ~~physician certified the borrower's became totally and permanently disabled. loan discharge application to the person who made the payments on the loan.~~

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(c) *Total and permanent disability discharges for veterans* —(1) *General*. A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in §674.51(aa)(2).

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(2) *Discharge application process for veterans who have a total and permanent disability as defined in §674.51(aa)(2)*. (i) If a veteran or veteran's representative notifies the institution that the veteran claims to be totally and permanently disabled as defined in §674.51(aa)(2), the institution must—

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(A) Direct the veteran to submit an application for a total and permanent disability discharge to the Secretary; and

(B) Grant a forbearance to the veteran in accordance with §674.33(d)(5)(ii). The forbearance period may not exceed 90 days.

(ii) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability as defined in §674.51(aa)(2), a The veteran or the veteran's representative must submit to the Secretary an application for total and permanent disability discharge on a form a discharge application approved by the Secretary, to the institution that holds the loan.

(iii) ii) With the application, the veteran must submit must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(iv) After the Secretary receives the application and supporting documentation described in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, the Secretary identifies any other title IV loans owed by the veteran and notifies the veteran and the holders of the loans that the borrower has applied for a disability discharge on those loans.

(v) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(vi) The lender notification described in paragraph (c)(2)(iv) of this section directs the lenders to suspend collection activity on the borrower's title IV loans.

(vii) The veteran notification described in paragraph (c)(2)(iv) of this section—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process under paragraph (c)(3) of this section for the Secretary's review of total and permanent disability discharge applications.

(iii) Upon receiving the veteran's completed application and the required documentation from the Department of Veterans Affairs, the institution must suspend collection activity on the loan and inform the veteran that—

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(A) ~~The institution will review the application and submit the application and supporting documentation to the Secretary for an eligibility determination if the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in §674.51(aa)(2);~~

(B) ~~The institution will resume collection on the loan if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(aa)(2); and~~

(C) ~~If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), but the documentation indicates that the veteran may be totally and permanently disabled as defined in §674.51(aa)(1), the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in §674.61(b);~~

(iv) ~~If the documentation from the Department of Veterans Affairs indicates that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), the institution must submit a copy of the veteran's application and the documentation from the Department of Veterans Affairs to the Secretary. At the time the application and documentation are submitted to the Secretary, the institution must notify the veteran that the veteran's discharge request has been referred to the Secretary for determination of discharge eligibility and that no payments are due on the loan.~~

(v) ~~If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), the institution must resume collection on the loan.~~

(3) ~~Secretary's *determination of eligibility review of the total and permanent disability discharge application.* (i) If, after reviewing the veteran's completed application, the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), the Secretary notifies the veteran and the veteran's lenders that the application for disability discharge has been approved. With this notification, the Secretary directs each institution holding a Direct, NDSL, or Perkins Loan made to the veteran to discharge the loan, institution of this determination, and the institution must—~~

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(A) ~~Discharge the veteran's obligation to make further payments on the loan; and~~

(ii) ~~The institution returns any payments received on or after the effective date of the date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.~~

(B) ~~Return to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.~~

(iv) ~~If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in §674.51(aa)(2), the Secretary notifies the veteran, and the institution that the application for a disability discharge has been denied. of this determination, and the institution must resume collection on the loan. The notification includes—~~

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(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note;

(C) An explanation that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation of how the veteran may request that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraphs (b)(1) through (b)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in §674.51(aa)(2), but indicates that the veteran may be totally and permanently disabled as defined in §674.51(aa)(1).

(d) *No Federal reimbursement.* No Federal reimbursement is made to an institution for ~~cancellation~~discharge of loans due to death or disability.

* * * * *

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

(c)(1) *Total and permanent disability.* (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in §682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through ~~(78)~~ of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)~~(89)~~ of this section.

(iv) For purposes of §682.402(c), a borrower's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge request.

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(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).* ~~After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that t~~ (i) If the borrower or the borrower's representative notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the lender must—

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(A) Direct the borrower to submit an application for total and permanent disability discharge to the Secretary; and

(B) Grant a forbearance to the borrower in accordance with §682.211(f)(5). The forbearance period may not exceed 90 days. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

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(ii) The borrower or borrower's representative must submit to the Secretary an application for a total and permanent disability discharge submit a discharge application to the lender on a form approved by the Secretary.

(iii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).

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(iv) The borrower or borrower's representative must submit the application described in paragraph (c)(2)(ii) of this section to the Secretary within 90 days of the date the physician certifies the application.

(v) After the Secretary receives the application described in paragraph (c)(2)(ii) of this section, the Secretary identifies any other title IV loans owed by the borrower and notifies the borrower, the holders of the loans, and the applicable guaranty agencies, that the borrower has applied for a disability discharge on those loans.

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(vi) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

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(vii) The lender notification described in paragraph (c)(2)(v) of this section directs the borrower's loan holders to suspend collection activity on the borrower's title IV loans.

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(viii) The borrower notification described in paragraph (c)(2)(v) of this section—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process under paragraph (c)(3) of this section for the Secretary's review of total and permanent disability discharge applications.

The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim under the procedures described in paragraph (c)(7) of this section, the guaranty agency must assign the loan to the Secretary.

(3) Secretary's review of total and permanent disability discharge application eligibility determination. (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification provided by the borrower supports the conclusion that the borrower is

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totally and permanently disabled, as described in paragraph (1) of the definition of that term in §682.200(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

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(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

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(iii) Upon making a determination After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary directs each lender to submit a disability claim to the guaranty agency and the guaranty agency assigns the loan to the Secretary.

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(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(5)(i) of this section. Any payments received after the date the physician certified the borrower's loan discharge application are returned to the person who made the payments on the loan

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes--

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary lender under the terms of the promissory note;

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(C) An explanation that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation of how the borrower may request that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation of how the borrower may submit a new application for total and permanent disability discharge if the borrower does not request re-evaluation of the borrower's prior discharge application within the timeframe specified by the Secretary.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling

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condition that was not available at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

~~(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.~~

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~~(4) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge. If a borrower received a Title IV loan or TEACH Grant prior to before the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.~~

(5) Application for new title IV loans or TEACH Grants after the date of the physician's certification. If a borrower initiates an application for a new title IV loan or TEACH Grant on or after the date the physician certified the borrower's discharge application, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loans.

~~(5) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (c)(3)(iii) of this section if ~~-, within three years after the date the Secretary granted the discharge, the borrower-~~~~

~~(A) During the three calendar year period beginning on January 1 of the first calendar year after the date the Secretary granted the discharge, the borrower H~~has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

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~~(B) During the period from the date the Secretary granted the discharge until the end of the three calendar year period specified in paragraph (c)(6)(i)(A) of this section, the borrower R~~receives a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or

~~(C) The borrower F~~fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the period from the date the Secretary granted the discharge until the end of the three calendar year period specified in paragraph (c)(6)(i)(A) of this section is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

~~(ii) If a~~the borrower's obligation to repay a loan is reinstated, the Secretary—

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(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

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(iii) The Secretary's notification under paragraph (c)(56)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

~~(67) Borrower's responsibilities after a total and permanent disability discharge. During the ~~three-~~ ~~year~~ periods described in paragraphs (c)(56)(i)(A) and (c)(6)(i)(B) of this section, the borrower or, if applicable, the borrower's representative must—~~

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(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(56)(i)(A) of this section; and

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

~~(78) Lender and guaranty agency actions. (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b). Except as provided in paragraph (c)(7)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.~~

~~(ii) If the Secretary approves the borrower's total and permanent disability discharge request—~~

~~(A) The lender must submit a disability claim to the guaranty agency, documented in accordance with paragraph (g)(1) of this section, if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).~~

~~(B) If the loan meets the conditions of §682.406, the guaranty agency must pay the claim submitted by the lender.~~

~~(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments subsequently received from or on behalf of the borrower.~~

~~(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.~~

~~(E) The guaranty agency must assign the loan to the Secretary within 30 days of the date the guaranty agency pays the disability claim.~~

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~~(iii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(7)(i) of this section, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.~~

~~(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b).~~

~~(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.~~

~~(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—~~

~~(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and~~

~~(B) If the Secretary discharges the loan based on a determination that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b), the Secretary will reinstate the borrower's obligation to repay the loan if, within three years after the date the Secretary granted the discharge, the borrower—~~

~~(1) Receives annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);~~

~~(2) Receives a new TEACH Grant or a new title IV loan, except for a FFEL or Direct Consolidation Loan that includes loans that were not discharged; or~~

~~(3) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the three-year period following the discharge date is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.~~

~~(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.~~

~~(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.~~

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~~(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.~~

~~(89) Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b)—(i) General. If a veteran or veteran's representative notifies the lender that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must—~~

~~(A) Direct the borrower to submit an application for a total and permanent disability discharge to the Secretary; and~~

~~(B) Grant a forbearance to the veteran in accordance with §682.211(f)(5). The forbearance period may not exceed 90 days. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.~~

~~(ii) After being notified by the veteran or the veteran's representative that the veteran claims to be totally and permanently disabled, the lender promptly requests that the veteran or the veteran's representative must submit to the Secretary an application for a total and permanent disability discharge application to the lender, on a form approved by the Secretary.~~

~~(iii) The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.~~

~~(iv) After the Secretary receives the application and supporting documentation described in paragraphs (c)(9)(ii) and (c)(9)(iii) of this section, the Secretary identifies any other title IV loans owed by the veteran and notifies the veteran, the holders of the veteran's loans, and the applicable guaranty agencies that the borrower has applied for a disability discharge on those loans.~~

~~(v) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.~~

~~(vi) The lender notification described in paragraph (c)(9)(iv) of this section directs the lenders to suspend collection activity on the veteran's title IV loans.~~

~~(vii) The veteran notification described in paragraph (c)(9)(iv) of this section—~~

~~(A) States that the application will be reviewed by the Secretary;~~

~~(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the veteran's application for a discharge; and~~

~~(C) Explains the process under paragraph (c)(9) of this section for the Secretary's review of total and permanent disability discharge applications.~~

~~(viii) After making a determination that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the veteran and the veteran's lenders that the application for a disability discharge has been approved. With this notification, the Secretary directs each lender to submit a disability claim to the guaranty~~

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agency. If the loan meets the conditions of §682.406, the guaranty agency must pay the claim and discharge the loan.

(ix) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

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(x) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes—

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(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the lender under the terms of the promissory note;

(C) An explanation that the lender will notify the borrower of the date the veteran must resume making payments on the loan;

(D) An explanation of how the veteran may request that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

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(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with procedures described in paragraphs (c)(2) through (c)(9) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

(xi) Lender and guaranty agency actions. (A) After being notified by a veteran or a veteran's representative that the veteran claims to be totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must continue collection activities until it receives the veteran's completed loan discharge application with the required documentation from the Department of Veterans Affairs, as described in paragraph (8)(i) of this section. Except as provided in paragraph (c)(8)(ii)(C) of this section, the lender will not attempt to collect from the veteran or any endorser after receiving the veteran's discharge application and documentation from the Department of Veterans Affairs.

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(B) If the Secretary approves the borrower's total and permanent disability discharge request based on a veteran submits a completed loan discharge application and the required documentation from the Department of Veterans Affairs, and the documentation indicates that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender must submit a disability claim to the guaranty agency, documented in accordance with paragraph (g)(1) of this section.

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(B) If the loan meets the conditions of §682.406 the guaranty agency must pay the claim submitted by the lender.

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(C) Upon receipt of the claim payment from the guaranty agency, the lender returns any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.

(D) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the veteran and the lender that the application for a disability discharge has been denied. The notification includes--

(1) The reason or reasons for the denial;

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(2) An explanation that the loan is due and payable to the lender under the terms of the promissory note;

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(3) An explanation that the lender will notify the veteran of the date the veteran must resume making payments on the loan;

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(4) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraphs (c)(1) through (c)(8) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

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~~(E) If the Secretary does not approve the borrower's total and permanent disability discharge based on documentation from the Department of Veterans Affairs, documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the lender—~~

~~(1) M~~ust resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

~~(2) Must inform the veteran that he or she may reapply for a total and permanent disability discharge in accordance with the procedures described in §682.402(c)(2) through (c)(7), if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.~~

~~(D) If the documentation from the Department of Veterans Affairs indicates that the borrower is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the guaranty agency must submit a copy of the veteran's discharge application and supporting documentation to the Secretary, and must notify the veteran that the veteran's loan discharge request has been referred to the Secretary for a determination of discharge eligibility.~~

~~(E) If the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the guaranty agency does not pay the disability claim and must return the claim to the~~

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lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the veteran that the application for a disability discharge has been denied, provide the basis for the denial, and inform the veteran that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with §682.202(b), any interest accrued and not paid during that period.

(F) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the guaranty agency that the veteran is eligible for a total and permanent disability discharge. Upon notification by the Secretary that the veteran is eligible for a discharge, the guaranty agency pays the disability discharge claim. Upon receipt of the claim payment from the guaranty agency, the lender notifies the veteran that the veteran's obligation to make any further payments on the loan has been discharged and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

(G) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in §682.200(b), the Secretary notifies the guaranty agency of this determination. Upon notification by the Secretary that the veteran is not eligible for a discharge, the guaranty agency and the lender must follow the procedures described in paragraph (c)(8)(ii)(E) of this section.

(H) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

* * * * *

(g) *Claim procedures for a loan held by a lender —(1) Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:

- (i) The original or a true and exact copy of the promissory note.
- (ii) The loan application, if a separate loan application was provided to the lender.
- (iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section, notification described in paragraph (c)(3)(iii) or (c)(9)(vii) in which the Secretary notifies the lender that the borrower is totally and permanently disabled. -

* * * * *

(g) (2) *Filing deadlines.* A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:

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(i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died;

~~(ii) Within 30 days of the date the lender received notification from the Secretary that the borrower is totally and permanently disabled, in accordance with §682.402(c)(3)(iii) or §682.402(c)(9)(vii) or the lender determines that the borrower is totally and permanently disabled.~~

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(h) *Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency* —(1) *General.* (i) Except as provided in paragraph (h)(1)(v) of this section, the guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death, disability, and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for ~~disability~~, closed school, or false certification claims.

* * * * *

(h)(1) (v) In the case of a disability claim based on a veteran's discharge request processed in accordance with §682.402(c)(~~89~~), the guaranty agency shall—

(A) Review the claim promptly and not later than 45 days after the claim was filed by the lender ~~submit the veteran's discharge application and supporting documentation to the Secretary~~ discharge the loan or return the claim to the lender in accordance with §682.402(c)(8)(ii)(D) or (E), as applicable; and

(B) Not later than 45 days after receiving notification from the Secretary of the veteran's eligibility ~~or ineligibility~~ for discharge, pay the claim ~~or return the claim to the lender~~ in accordance with §682.402(c)(8)(ii)(F) or (G), as applicable.

(2)(i) The amount of loss payable—

(A) On a death or disability claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim.

* * * * *

(h)(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

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(ii) During a period not to exceed 30 days following the receipt date by the lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death, disability or bankruptcy claims; or

(B) 90 days for ~~disability~~, closed school, or false certification claims.

* * * * *

(k) *Claims for reimbursement from the Secretary on loans held by guaranty ~~eee~~ agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

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(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, bankruptcy, closed school, or false certification claim in an amount determined under §682.402(k)(5) on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or ~~the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan,~~ or has filed for relief in bankruptcy, in accordance with the procedures in paragraphs (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the Secretary determines that the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, ~~or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan,~~ or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility

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to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

(iii) In the case of a Consolidation loan, the borrower (or one of the co-makers) has died, is determined by the Secretary to be totally and permanently disabled under §682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in §682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under §682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under §682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy, or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

* * * * *

(k) (5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during—

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the guaranty agency Secretary makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

(iii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

* * * * *

(r) *Payments received after the Secretary's payment of a death, disability, closed school, false certification, or bankruptcy claim* (1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency must return 100 percent of these payments to the sender. The guaranty agency must promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it must notify the borrower that there is no obligation to repay a loan discharged on the basis of death, bankruptcy, false certification, or closing of the school.

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(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary ~~based on the Secretary's for~~ determination of eligibility for a total and permanent disability discharge, the guaranty agency must ~~promptly return these payments to the sender~~ ~~forward those payments to the Secretary for crediting to the borrower's account~~. At the same time that the agency ~~forwards~~ ~~returns~~ the payments, it must notify the borrower that there is no obligation to make payments on the loan ~~while it is conditionally~~ ~~after is has been~~ discharged ~~due to prior to a final determination of eligibility for~~ a total and permanent disability ~~discharge~~, unless ~~the loan is reinstated in accordance with §682.402(c), or~~ the Secretary directs the borrower otherwise.

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(3) When the Secretary ~~makes a final determination to~~ discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(4) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

(5) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraphs (r)(1) or (r)(2) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

* * * * *

§ 685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in ~~34 CFR 682.200(b)~~ §685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in ~~34 CFR 682.200(b)~~ §685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in ~~34 CFR 682.200(b)~~ §685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of §685.213, a borrower's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge request.

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(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in ~~34 CFR 682.200(b)~~ §685.102(b)* —(1) *Borrower application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower or borrower's representative must submit a discharge application to the Secretary on a form approved by the Secretary.

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(2) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in ~~34 CFR 682.200(b)~~§685.102(b).

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(3) -The borrower or borrower's representative must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician certifies the application. Upon receipt of the borrower's application, the Secretary —

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(i) Identifies any other title IV loans owed by the borrower and notifies the borrower and the holders of the loans that the borrower has applied for a disability discharge on those loans;

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(ii) If the application is incomplete, notifies the borrower or the missing information and requests the missing information from the borrower, the borrower's representative, or the physician who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

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(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process under paragraph (b)(4) of this section for the Secretary's review of total and permanent disability discharge applications.

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(24) Determination of eligibility. (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in ~~34 CFR 682.200(b)~~§685.102(b), the borrower is considered totally and permanently disabled as of the date the physician certifies the borrower's application.

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(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) Upon making a determination After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in ~~34 CFR 682.200(b)~~§685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician certified the borrower's loan discharge application. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(4)(i) of this section.

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(iv) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in ~~34 CFR 682.200(b)~~§685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note. The notification to the borrower includes —

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(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note;

(C) The date that the borrower must resume making payments;

(D) An explanation of how the borrower may request that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation of how the borrower may submit a new application for total and permanent disability discharge if the borrower does not request re-evaluation of the borrower's prior discharge application within the timeframe specified by the Secretary.

(iv) If the borrower requests re-evaluation in accordance with paragraph (b)(24)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(24)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not available at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

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~~(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in 34 CFR 682.200(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.~~

~~(35) Treatment of disbursements made during the period from the date of the physician's certification until the date of discharge.~~ If a borrower received a title IV loan or TEACH Grant ~~prior to before~~ the date the physician certified the borrower's discharge application and a disbursement of that loan or grant is made during the period from the date of the physician's certification until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

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~~(46) Application for new title IV loans or TEACH Grants after the date of the physician's certification.~~ If a borrower initiates an application for a new title IV loan or a TEACH Grant on or after the date the physician certified the borrower's discharge application, the Secretary denies the borrower's discharge request and resume collection on the borrower's loan.

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~~(4)(57) Conditions for reinstatement of a loan after a total and permanent disability discharge.~~ (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(24)(ii)(iii) of this section if, ~~within three years after the date the Secretary granted the discharge, the borrower~~—

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(A) During the three calendar-year period beginning on January 1 of the first calendar year after the date the Secretary granted the discharge, the borrower Hhas annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

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(B) During the period from the date the Secretary granted the discharge until the end of the three calendar year period specified in paragraph (b)(7)(i)(A) of this section, the borrower Rreceives a new TEACH Grant or a new loan under the Perkins, ~~FFEL~~ or Direct Loan programs, except for a ~~FFEL or~~ Direct Consolidation Loan that includes loans that were not discharged; or

(C) The borrower Ffails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made during the period from the date the Secretary granted the discharge until the end of the three calendar year period specified in paragraph (b)(7)(i)(A) of this section is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated; and

(B) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b) ~~(4)~~ (57) (ii)(A) of this section will include—

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(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

~~(58)~~ *Borrower's responsibilities after a total and permanent disability discharge.* During the ~~three-year periods~~ described in paragraphs ~~(b)(4)(i)(b)~~ (57)(i)(A) and (B) of this section, the borrower or, if applicable, the borrower's representative must—

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(i) Promptly notify the Secretary of any changes in address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b) ~~(4)~~ (57) (i)(A) of this section; and

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(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment.

(c) *Discharge application process for veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in ~~34 CFR 682.200(b)~~ §685.102(b).* (1) *Veteran's application for discharge.* To qualify for a discharge of a Direct Loan based on a total and permanent disability as described in paragraph (2) of the definition of that term in ~~34 CFR 682.200(b)~~ §685.102(b), a veteran or veteran's representative must submit a discharge application to the Secretary on a form approved by the Secretary. The application must be accompanied by documentation from the Department of Veterans Affairs showing that the Department of Veterans Affairs has determined that the veteran is unemployable due to a service-connected disability. The Secretary does not require the veteran to provide any additional documentation related to the veteran's disability. Upon receipt of the veteran's application, the Secretary —

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(i) Identifies any other title IV loans owed by the veteran and notifies the veteran and the holders of the veteran's loans that veteran has applied for a disability discharge on those loans;

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(ii) If the application is incomplete, requests the missing information from the veteran or the veteran's representative, and does not make a determination of eligibility for discharge until the application is complete;

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(iii) Notifies the veteran that no payments are due on the loan while the Secretary determines the veteran's eligibility for discharge; and

(iv) Explains the Secretary's process under paragraph (c)(2) of this section for reviewing total and permanent disability discharge requests applications.

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(2) *Determination of eligibility.* (i) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in ~~5682.200(b)~~§685.102(b), the Secretary discharges the veteran's obligation to make any further payments on the loan and returns to the person who made the payments on the loan any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability.

~~(ii)(A)~~ If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as described in paragraph (2) of the definition of that term in ~~34 CFR 682.200(b)~~§685.102(b), the Secretary notifies the veteran that the application for a disability discharge has been denied, ~~and that the loan is due and payable to the Secretary under the terms of the promissory note.~~ The notification to the veteran includes –

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the Secretary under the terms of the promissory note;

(C) The date that the veteran must resume making payments;

(D) An explanation of how the veteran may request that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

~~(B)(E)~~ Information on how The Secretary notifies the veteran ~~that he or she~~ may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraph (b) of this section if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as described in paragraph (2) of the definition of that term in ~~34 CFR 682.200(b)~~§685.102(b), but indicates that the veteran may be totally and permanently disabled as described in paragraph (1) of the definition of that term.

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**Issue Paper #16
Proposed Regulatory Language
Loans Group**

Issue: Title IV Closed School Loan Discharge

Statutory Cites: §§437(c)(1) and 464(g)

Regulatory Cites: §§674.33(g), 682.402(d), and 685.214

Summary of Change:

Under the current closed school discharge regulations in the Perkins, FFEL, and Direct Loan programs, a borrower may qualify for a loan discharge if he or she was unable to complete a program of study while the school closed, or withdrew from the school no more than 90 days before the school closed. The 90-day window may be extended if the Department determines that there are exceptional circumstances related to the school's closure. The proposed regulatory language extends the current 90-day window to 120 days, and adds examples of the types of exceptional circumstances under which the Department may extend the 120-day window.

Change:

§674.33 Closed School Discharge.

* * * * *

(g) Closed school discharge--(1) General. (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section--

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) "School" means a school's main campus or any location or branch of the main campus; and

(C) The "holder" means the Secretary or the school that holds the loan.

(2) Relief pursuant to discharge. (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

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

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to have been in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

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(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) Determination of borrower qualification for discharge by the Secretary. The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that--

(i) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.213 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(4) Borrower qualification for discharge. Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and 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--

(i) State that the borrower--

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 90 days (or longer in exceptional circumstances) before the school closed. This 120 day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation that results in school closure, the school's discontinuation of the majority of its programs, or state action to revoke the school's license to operate or award academic credentials in the state.;
and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means;

(ii) State whether the borrower has made a claim with respect to the school's closing 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 credited to the borrower's loan obligation; and

(iii) State that the borrower--

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

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(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) Fraudulently obtained loans. A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) Cooperation by borrower in enforcement actions. (i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must--

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

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

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

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

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

(7) Transfer to the Secretary of borrower's right of recovery against third parties. (i) In the case of a loan held by the Secretary, upon discharge under 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 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, its 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 this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, 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 limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

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(8) Discharge procedures. (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than ~~120~~ 90 days prior to the closure date.

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

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school 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 (g)(8)(ii) of this section.

(iv) In the case of a loan held by a school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under Sec. 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

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

(vii) In the case of a loan held by the Secretary, 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.

(viii) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(ix) In the case of a loan held by a school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

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

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(d) *Closed school--(1) General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled, closed, or the borrower (or student) withdrew from the school not more than 90 120 days prior to the date the school closed. This 12090-day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing would justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation that results in the school's closure, the school's discontinuation of the majority of its programs, or state action to revoke the school's license to operate or award academic credentials in the state; and

(ii) For purposes of the closed school discharge authorized by this section--

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) The term "borrower" includes all endorsers on a loan; and

(C) A "school" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (d) of this section relieves the borrower of an existing or past obligation to repay the loan 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 (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) 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 (d) of this section must be 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 credit history assigned to the loan.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (d)(8) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state--

(i) Whether the student has made a claim with respect to the school's closing 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) That the borrower (or the student for whom a parent received a PLUS loan)--

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(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;

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or on an approved leave of absence in accordance with Sec. 682.605(c), or the student withdrew from the school not more than 120 ~~90~~ days before the school closed; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(iii) That the borrower agrees to provide, upon request by the 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 (d) of this section; and

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

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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 (d) 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) *Guaranty agency responsibilities--(i) Procedures applicable if a school closed on or after January 1, 1986, but prior to June 13, 1994.* (A) If a borrower received a loan for attendance at a school with a closure date on or after January 1, 1986, but prior to June 13, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's "Closed School Policy" as authorized by section IV of Bulletin 89-G-159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than August 13, 1994.

(C) A guaranty agency shall review its records and identify all schools that appear to have closed on or after January 1, 1986 and prior to June 13, 1994, and shall identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than ~~120~~ 90 days prior to the closure date.

(D) A guaranty agency shall notify the Secretary immediately if it determines that a school not previously known to have closed appears to have closed, and, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than ~~120~~ 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall--

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(E) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty 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 notify the borrower

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that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.

(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 and the reasons for it 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~~ 90 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 Sec. 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.

(ii) *Procedures applicable if a school closed on or after June 13, 1994.*

(A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a school may have closed. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has closed and, within 30 days after receiving information indicating that the school may have closed, report the results of its investigation to the Secretary concerning the date of the school's closure and whether a teach-out of the closed school's program was made available to students.

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(B) If a guaranty agency determines that a school appears to have closed, it shall, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than ~~120~~ 90 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall--

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than ~~120~~ 90 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(C) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty 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 notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(D) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, within one year after identifying the borrower, attempt to locate the borrower and further determine the borrower's potential eligibility for a discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(ii)(B) of this section.

(E) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) 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.

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it 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;

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(3) Was notified by the Secretary that the school had closed on a date that was more than ~~120~~ 90 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.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's request and supporting sworn statement 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, and shall take the following actions--

(1) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (d) of this section, it shall pay the claim in accordance with Sec. 682.402(h) not later than ~~120~~ 90 days after the agency received the claim; or

(2) If the agency determines that the borrower does not qualify for a discharge, the agency shall, not later than ~~90~~ 120 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(H) If a borrower 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 lender or 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 lender or guaranty agency may capitalize, in accordance with Sec. 682.202(b), any interest accrued and not paid during that period.

(I) 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.

(7) *Lender responsibilities.* (i) A lender shall comply with the requirements prescribed in paragraph (d) of this section. In the absence of specific instructions from a guaranty agency or the Secretary, if a lender receives information from a source it believes to be reliable indicating that an existing or former borrower may be eligible for a loan discharge under paragraph (d) of this section, the lender shall immediately notify the guaranty agency, and 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).

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days after 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 Sec. 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with Sec. 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (d)(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

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shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all credit bureaus to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. 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 Sec. 682.202(b), any interest accrued and not paid during that period.

(8) *Discharge without an application.* A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the--

(i) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.213 under the William D. Ford Federal Direct Loan Program; or

(ii) The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

* * * * *

§685.214 Closed school discharge.

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section--

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; and

(ii) "School" means a school's main campus or any location or branch of the main campus.

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

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

(3) 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.

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(4) The Secretary reports the discharge of a loan under this section to all credit reporting agencies to which the Secretary previously reported the status of the loan.

(c) *Borrower qualification for discharge.* In order to qualify for discharge of a loan under this section, a borrower shall submit to the Secretary a written request and 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 shall--

(1) State that the borrower (or the student on whose behalf a parent borrowed)--

(i) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 90 days before the school closed ~~(or longer in exceptional circumstances)~~. This 120 day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation that results in school's closure, the school's discontinuation of the majority of its programs, or state action to revoke the school's license to operate or award academic credentials in the state; and

(iii) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(2) State whether the borrower (or student) has made a claim with respect to the school's closing 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; and

(3) 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 in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower shall cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower shall--

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

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(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

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

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

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

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under 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, its 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.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those 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.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(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~~ 90 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 written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes

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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) 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.

(6) 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.

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**Issue Paper #17
Proposed Regulatory Language
Loans Group**

Issue: Satisfactory Repayment Arrangements on Defaulted Title IV Loans for Borrowers who also Rehabilitate the Loan

Statutory Cite: §428F(b)

Regulatory Cites: §§674.2(b), 674.9(j), 674.39(a)(2), 682.200(b), 682.401(b)(4), 682.405(a)(2)(i), 685.102(b), and 685.200(d)

Summary of Change: The proposed regulatory language amends the definition of “Satisfactory repayment arrangement” in the Perkins, FFEL, and Direct Loan programs. The revised definition specifies that a borrower who makes 6 monthly qualifying rehabilitation payments without receiving additional Title IV aid and then re-defaults, does not lose the option to regain Title IV eligibility by making satisfactory repayment arrangements.

Change:

§ 674.2 Definitions.

* * * * *

(b) The Secretary defines other terms used in this part as follows:

* * * * *

Satisfactory repayment arrangement: (1) For purposes of regaining eligibility for grant, loan, or work assistance under Title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six (6) on-time, consecutive, voluntary, full, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once ~~on a defaulted loan~~.

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(2) Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

* * * * *

§ 674.9 Student eligibility.

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A student at an institution of higher education is eligible to receive a loan under the Federal Perkins Loan program for an award year if the student—

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(j) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in §674.5(c)(3)(i) or (ii) except that—

(1) For purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are ~~those~~ payments made directly by the borrower; and

(2) Voluntary payments do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(k) In the case of a borrower who is in default on an FFEL Program or a Direct Loan Program Loan, makes satisfactory repayment arrangements as defined in §682.200(b) or §685.102(b) on the defaulted loan, as determined by the loan holder

(~~k~~) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

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§ 682.200 Definitions.

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(b) The following definitions also apply to this part:

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Satisfactory repayment arrangement. (1) For purposes of regaining eligibility under §682.401(b)(4), the making of six (6) consecutive, on-time, voluntary full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For purposes of consolidating a defaulted loan under 34 CFR 682.201(c)(1)(iii)(C), the making of three (3) consecutive, on-time voluntary full monthly payments on a defaulted loan.

(3) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. Voluntary payments are ~~those~~ payments made directly by the borrower, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. On-time means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary full monthly payments under an agreement to rehabilitate a defaulted loan but does not receive additional title IV assistance prior to defaulting on that loan again.

§ 685.102 Definitions.

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(b) The following definitions also apply to this part:

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Satisfactory repayment arrangement. (1) For the purpose of regaining eligibility under section 428F(b) of the HEA, the making of six consecutive, voluntary, on-time, full monthly payments on a defaulted loan. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) For the purpose of consolidating a defaulted loan under 34 CFR 685.220(d)(1)(ii)(C), the making of three consecutive, voluntary, on-time, full monthly payments on a defaulted loan.

(3) The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. "On-time" means a payment made within 15 days of the scheduled due date, and voluntary payments are ~~those~~ payments made directly by the borrower and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(4) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary full monthly payments under an agreement to rehabilitate a defaulted loan but does not receive additional title IV assistance prior to defaulting on that loan again.

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§ 685.200 Borrower eligibility.

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(d) *Defaulted FFEL Program and Direct Loan borrowers.* Except as noted in §685.220(d)(1)(ii)(D), in the case of a student or parent borrower who is currently in default on an FFEL Program or a Direct Loan Program Loan, the borrower shall make satisfactory repayment arrangements, as described in paragraph (2) of the definition of that term under §685.102(b), on the defaulted loan.

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**Issue Paper #18
Proposed Regulatory Language
Loans Group**

Issue: School Enrollment Status Reporting Requirements

Statutory Cites: §§428(b)(1)(P), 454(a)(1)(E)(i), and 487(a)(3) and (5)

Regulatory Cites: §§674.19, 682.610(c), 682.605(a), and 685.309(b).

Summary of Change:

The proposed changes update FFEL and Direct Loan regulatory provisions related to school enrollment status reporting to reflect current terminology and procedures, and add comparable enrollment reporting provisions to the Perkins Loan regulations.

Change:

§674.19 Fiscal procedures and records.

(f) Enrollment reporting process. (1) Upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary –

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 15 days after the date the school discovers that –

(i) A Federal Perkins Loan was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the institution and who received a Federal Perkins Loan, NDSL, or National Defense Loan has changed his or her permanent address.

§ 682.610 Administrative and fiscal requirements for participating schools.

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~~(c) Student status confirmation reports~~Enrollment reporting process. A school shall—

~~(1) Upon receipt of a student status confirmation~~an enrollment report ~~form~~ from the Secretary ~~or a similar student status confirmation report form from any guaranty agency, a school must complete~~update all information included in the report and return ~~that the~~ report to the Secretary –

(i) In the manner and format prescribed by the Secretary; and

(ii) within the timeframe specified by 30 days of receipt to the Secretary, or the guaranty agency,
as appropriate; and

(2) Unless it expects to submit its next ~~student status confirmation~~updated enrollment report to the Secretary ~~or the guaranty agency~~ within the next 60 days, a school must notify the ~~Secretary~~guaranty agency or lender within ~~30~~15 days ~~— after the date the school discovers that –~~

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but whoA Subsidized or Unsubsidized Federal Stafford Loan, or Federal PLUS Loan was made to or on behalf of student who was enrolled or accepted for enrollment at the school, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended;

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis; or

(iv)~~(ii) If it discovers that a~~ student who is enrolled at the school and who ~~has~~ received a Subsidized or Unsubsidized Federal Stafford Loan, or student Federal PLUS Loan or SLS loan has changed his or her permanent address.

§682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term or terms in which classes are offered but students are not generally required to attend, a school must follow the procedures in Sec. 668.22(b) or (c), as

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applicable, for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in Sec. 668.22(b) or (c), as applicable, except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school must use the withdrawal date determined under Sec. 668.22(b) or (c), as applicable for the purpose of reporting to the lender and the Secretary the date that the student has withdrawn from the school.

(c) For the purpose of a school's reporting to the lender and the Secretary, a student's withdrawal date is the month, day and year of the withdrawal date.

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

~~(b) Student status confirmation reports~~Enrollment reporting process. A school shall—

(1) Upon receipt of a student status confirmation an enrollment report from the Secretary, a school must update all information included in the report complete and return that the report to the Secretary

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(i) In the manner and format prescribed by the Secretary; and

(ii) within 30 days of receipt; and the timeframe prescribed by the Secretary.

(2) Unless it expects to submit its next student status confirmation updated enrollment report to the Secretary within the next 60 days, a school must notify the Secretary within 3015 days if after the date the school discovers that a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan has been made to or on behalf of a student who—

(i) A Direct Subsidized Loan, Direct Unsubsidized Loan, or Direct PLUS Loan was made to or on behalf of a student who was Enrolled or accepted for enrollment at that the school, and the student -but- has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

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~~(ii) Has been accepted for enrollment at that school but failed to enroll on at least a half-time basis for the period for which the loan was intended; or~~

(iii) A student who is enrolled at the school and who received a Direct Subsidized Loan, Direct Unsubsidized Loan, or student Direct PLUS Loan ~~h~~ has changed his or her permanent address.

~~(3) The Secretary provides student status confirmation reports to a school at least semi-annually.~~

~~(4) The Secretary may provide the student status confirmation report in either paper or electronic format.~~

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**Issue Paper #19
Proposed Regulatory Language
Loans Group**

Issue: Federal Perkins Loan Graduate Fellowship Deferment Eligibility

Statutory Cite: §464 (c)(2)(A)(i)(II)

Regulatory Cite: §674.34(f)

Summary of Change:

The proposed regulatory language incorporates the graduate fellowship deferment eligibility criteria from §682.210(d) of the FFEL regulations into the Perkins regulations.

Change:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

~~(1)~~ To qualify for a deferment for study as part of a graduate fellowship program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution ~~certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program, with a statement from an authorized official of the borrower's graduate fellowship program certifying—~~

~~(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;~~

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~~(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and~~

~~(iii) The borrower's anticipated completion date in the program.~~

~~(2) For purposes of paragraph (b)(1)(ii) of this section, an eligible graduate fellowship program is a fellowship program that—~~

~~(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;~~

~~(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;~~

~~(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and~~

~~(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.~~

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Issue Paper #20
Proposed Regulatory Language
Loans Group

Issue: Social Security Number Requirement for Assignment of Federal Perkins Loans to the Department of Education

Statutory Cite: N/A

Regulatory Cite: §674.50(e)(1)

Summary of Change:

The proposed regulatory language amends the Perkins assignment requirements to allow assignment of a Perkins Loan Program Loan without a Social Security Number, if the loan was made before the Department required Social Security Numbers to be collected on the Perkins Loan Program Loan promissory notes.

Change:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower, unless the loan was made before September 13, 1982, is submitted for assignment under 674.8(d)(3);

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order; or

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

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**Issue Paper #21
Proposed Regulatory Language
Loans Group**

Issue: Federal Perkins Loan Cancellation Rate Progression Across Cancellation Categories

Statutory Cite: §465(a)(3)(A)

Regulatory Cite: §§674.52, 674.53(d), 674.56(h), 674.57(c)(2), 674.59(c)(2) and 674.60(b)

Summary of Change:

The proposed regulatory language allows a borrower who switches from one cancellation category to another to receive cancellation at the same annual cancellation rate the borrower would have received if the borrower had continued to provide eligible service under the original cancellation category. To qualify for this benefit, the borrower must provide eligible service in cancellation categories that have the same cancellation rate progression.

Change:

§ 674.52 Cancellation procedures.

* * * * *

Issue Paper #23 redesignates 674.52(e) as 674.52(f). Issue Paper #21 adds a new paragraph 674.52(g) to read as follows:

(g) *Switching cancellation categories.* (1) A borrower who qualifies for a cancellation under one of the cancellation categories in paragraphs 674.53, 674.56, 674.57, or 674.59 of this section receives cancellation of 15 percent of original principal for the first and second year of qualifying service, 20 percent of original principal for the third and fourth year of qualifying service, and 30 percent of original principal for the fifth year of qualifying service. If, after the first, second, third, or fourth year of qualifying service—

(i) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under paragraphs 674.53, 674.56, 674.57, or 674.59 of this section, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category.

(ii) The borrower switches to a position that qualifies the borrower for cancellation under paragraphs 674.58, or 674.60 of this section, the borrower's cancellation rate progression under the new cancellation category begins at the year one cancellation rates specified in paragraphs 674.58(b) or 674.60(b), respectively.

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**Issue Paper #22
Proposed Regulatory Language
Loans Group**

Issue: Federal Perkins Loan Economic Hardship Deferment Debt-to-Income Ratio Provision

Statutory Cite: §435(o)

Regulatory Cite: §674.34(e)(4)

Summary of Change:

The proposed regulatory language removes the debt-to-income economic hardship deferment category and related provisions from the Perkins deferment regulations.

Change:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(54) of this section may be granted for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(54) of this section.

(1) Has been granted an economic hardship deferment under either the Federal Direct Loan Program or the FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan.

(2) Is receiving payment under a Federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance.

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

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~~(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on Federal postsecondary education loans, as determined under paragraph (e)(10) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section;~~

(54) Is serving as a volunteer in the Peace Corps.

~~(6) For a deferment granted under paragraph (e)(4) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment—~~

~~(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and~~

~~(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for Federal postsecondary education loans in accordance with paragraph (e)(9) of this section.~~

~~(75) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e)(3) and (e)(4) of this section, the institution shall require the borrower to submit a copy of the borrower's Federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.~~

(86)(i) For purposes of paragraph (e)(3) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

~~(9) In determining a borrower's Federal education debt burden under paragraphs (e)(4) of this section, the institution shall—~~

~~(i) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly); or~~

~~(ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.~~

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**Issue Paper #23
Proposed Regulatory Language
Loans Group**

Issue: Federal Perkins Loan Program: Break in Cancellation Service Due to a Condition Covered Under the Family and Medical Leave Act (29 U.S.C. 2601 et. seq.)

Statutory Cites: §§465(a)(3)(A) and 465(a)(4)

Regulatory Cites: §§674.52(b)(2), 682.216(c)(7)(ii), and 685.217(c)(7)(ii)

Summary of Change:

The proposed regulatory language allows a break in Perkins teacher cancellation service due to a condition covered by the Family and Medical Leave Act (FMLA), as is currently provided for in the FFEL and Direct Loan teacher forgiveness regulations. The proposed regulations also allow for a break in service in the other Perkins cancellation categories due to a condition covered by the FMLA.

Change:

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b) *Part-time employment.* (1)(i) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(ii) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Break in service.* (2) If the borrower is unable ~~to due to illness or pregnancy to~~ complete ~~the an~~ academic year, ~~the borrower still qualifies for the cancellation if~~ of eligible teaching service due to a condition that is covered under the Family and Medical Leave Act (FMLA) (29 U.S.C. 2601, et. seq.), the period of the qualifying FMLA condition does not constitute a break in the required academic year of teaching service if—

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(i) The borrower completes ~~the first one~~ half of the academic year, ~~and has begun teaching the second half; and~~

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for purposes of salary ~~increases increment~~, tenure, and retirement; and

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(ii) The borrower resumes eligible teaching service no later than the beginning of the next regularly scheduled academic year .-

(2) If the borrower is unable to complete a year of eligible service under paragraphs 674.56; 674.57, 674.59, or 674.60 of this section due to a condition that is covered under the Family and Medical Leave Act (FMLA) (29 U.S.C. 2601, *et. seq.*), the period of the qualifying FMLA condition does not constitute a break in the required year of eligible service if—

(i) The borrower completes at least six consecutive months of eligible service; and

(ii) The borrower resumes eligible service no later than six months from the beginning date of the period of the qualifying FMLA condition.

(ed) Cancellation of a defaulted loan. (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for discharge on account of the death or disability of the borrower, or, if the borrower is the spouse of an eligible public servant as defined in §674.64(a)(1), on account of the death or disability of the borrower's spouse, without regard to the repayment status of the loan.

(de) Concurrent deferment period. The Secretary considers a Perkins Loan, NDSL or Defense Loan borrower's loan deferment under §674.34(c) to run concurrently with any period for which cancellation under §§674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under §674.34 to run concurrently with any period for which a cancellation under §§674.53, 674.56, 674.57, or 674.58 is granted.

(ef) National community service. No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

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**Issue Paper #24
Proposed Regulatory Language
Loans Group**

Issue: Standard for On-Time Rehabilitation Payments in the Federal Perkins Loan Program

Statutory Cites: §§428F(a)(1)(A) and 464(h)(1)(A)

Regulatory Cites: §§674.39(a)(2), 682.405(a)(2)(A)(3), and 685.211(f)(1)

Summary of Change:

The proposed regulatory language requires a payment to be made within 20 days of the due date for purposes of Perkins Loan rehabilitation.

Change:

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part, except for loans for which a judgment has been secured or loans obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an ~~on-time~~, full monthly payment, as determined by the institution, within 20 days of the due date, each month, for nine consecutive months, and the borrower requests rehabilitation.

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**Issue Paper #25
Proposed Regulatory Language
Loans Group**

Issue: FFEL Program Administrative Wage Garnishment (AWG) Hearings for Defaulted Borrowers

Statutory Cite: §488A

Regulatory Cite: §682.410(b)(9)

Summary of Change:

The proposed regulatory language amends the requirements of guaranty agencies using administrative wage garnishment for defaulted borrowers to reflect existing Department regulations and subregulatory guidance. The language allows borrowers to object to the enforceability of the debt or the amount and the rate of the borrower's disposable pay subject to garnishment for reasons of financial hardship. The language specifies the order of compliance and limitations on the amount of garnishment in the case of multiple garnishment orders. The language specifies the manner by which agencies may use third-party contractors. The language also specifies the manner by which a garnishment order ends.

Change:

§682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) Administrative requirements—

* * * * *

(9) *Administrative Garnishment.*

(i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it shall do so in accordance with the following procedures:

~~(A) The employer shall deduct and pay to the agency from a borrower's wages an amount that does not exceed the lesser of 15 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673 unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.~~

~~(B) At least 30 days before the initiation of garnishment proceedings, the guaranty agency shall mail to the borrower's last known address, a written notice described in paragraph (b)(9)(i)(B) of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights.~~

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(B) The notice must describe the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, an explanation of the borrower's rights, and the deadlines by which a borrower must exercise those rights, and the consequences of failure to exercise those rights in a timely manner.

(C) The guaranty agency shall offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency shall offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E)(1) The guaranty agency shall offer the borrower an opportunity for a hearing in accordance with paragraphs (b)(9)(i)(F)-(J) of this section and other guidance provided by the Secretary for any objection regarding concerning the existence, or the amount, or enforceability of the debt, and any objection that withholding from the borrower's disposable pay in the amount or at the rate proposed in the notice would cause financial hardship to the borrower and, in the case of a borrower whose proposed repayment schedule under the garnishment order is established other than by a written agreement under paragraph (b)(9)(i)(D) of this section, the terms of the repayment schedule.

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(2) At the borrower's option, the hearing may be oral or written. The time and location of the hearing shall be established by the guaranty agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. The agency will notify the borrower of the process for arranging the time and location of an oral hearing. All telephonic charges are the responsibility of the agency. All travel expenses incurred by the borrower in connection with an in-person oral hearing are the responsibility of the borrower.

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(F)(1) If the borrower submits a written request for a hearing on the existence or amount of the debt, the guaranty agency must provide evidence of the existence of the debt. If the agency provides evidence of the existence of the debt, the borrower must prove by the preponderance of the evidence that no debt exists, the amount the guaranty agency claims the borrower owes is incorrect, or that the debt is not delinquent.

(2) If the borrower submits a written request for a hearing on the amount or rate of the borrower's disposable income that the agency proposes to order withheld on the ground that it would cause financial hardship to the borrower and the borrower's spouse and dependents -- The guaranty agency shall sue any employer for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (b)(9)(i)(H) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(a) the borrower bears the burden of proving the claim of financial hardship by a preponderance of the credible evidence by providing credible documentation that the amount of wages proposed in the notice would leave the borrower unable to meet basic living expenses of the borrower, the borrower's spouse, and the borrower's dependents. The documentation must show the amount of the costs incurred for basic living expenses and the income available from any source to meet those expenses.

(b) the borrower's claim of financial hardship shall be evaluated by comparing the amounts that the borrower proves are being incurred for basic living expenses against the amounts spent for basic living expenses by families of the same size and similar income to the borrower's. The standards published by the Internal Revenue Service under 26 U.S.C. 7122(c)(2) (the "National Standards") shall be considered

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to establish the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to, the borrower's family.

(c) the amount that the borrower proves is incurred for a type of basic living expense shall be considered to be reasonable to the extent that the amount does not exceed the amount spent for that expense by families of the same size and similar income according to the National Standards. If the borrower claims an amount for any basic living expense that exceeds the amount in the National Standards, the borrower must prove that the amount claimed is reasonable and necessary.

(d) the garnishment may be ordered at a lesser rate or amount, if any, that is determined will allow the borrower to meet basic living expenses proven to be reasonable and necessary if the borrower's objection to the rate or amount proposed in the notice is upheld in whole or in part. If this financial hardship determination is made after a garnishment order is already in effect, the guaranty agency shall notify the borrower's employer of any change required by the determination in the amount to be withheld or the rate of withholding under that order.

(e) a determination by a hearing official that financial hardship would result from garnishment is effective for a period not longer than six months after the date of the finding. After this period, the guaranty agency may require the borrower to submit current information regarding the borrower's family income and living expenses. If the guaranty agency concludes from a review of that evidence that it should increase the amount or rate of withholding, the guaranty agency must notify the borrower and provide the borrower with an opportunity to contest the determination and obtain a hearing on the objection under the procedures in paragraph (b)(9)(i).

~~(G) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.~~

~~(H) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.~~

~~(I) The notice given to the employer under paragraph (b)(9)(i)(H) of this section must contain only the information as may be necessary for the employer to comply with the withholding order.~~

~~(J) The guaranty agency shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The time and location of the hearing shall be established by the agency. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. All telephonic charges must be the responsibility of the guaranty agency.~~

~~(K)~~ (G) If the borrower's written request for a hearing is received by the guaranty agency on or before the 15th day following the borrower's receipt of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(9)(i)(B) of this section 5 days after it was mailed by the agency. The guaranty agency shall provide a hearing to the

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borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(LH) If the borrower's written request for a hearing is received by the guaranty agency after the 15th day following the borrower's receipt of the notice described in paragraph (b)(9)(i)(B) of this section, the guaranty agency shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order. For purposes of this paragraph, in the absence of evidence to the contrary, a borrower shall be considered to have received the notice described in paragraph (b)(9)(i)(B) of this section 5 days after it was mailed by the agency.

(M) The hearing official appointed by the agency to conduct the hearing may be any qualified individual, including an administrative law judge. Under no circumstance may the hearing official be, not under the supervision or control of the head of the guaranty agency or of a third-party servicer or collection contractor employed by the agency.

(N) The hearing official shall conduct any hearing as an informal proceeding, require witnesses in an oral hearing to testify under oath or affirmation, and maintain a summary record of any hearing. The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request. However –

(1) The borrower may request an extension of that deadline for a reasonable period, as determined by the hearing official, for the purpose of submitting additional evidence; and

(2) The agency may request, and the hearing official shall grant, a reasonable extension of time sufficient to enable the guaranty agency to evaluate and respond to the objection.

(K) A borrower may, at any time, raise an objection to the amount or the rate of withholding specified in the guaranty agency's order to the borrower's employer on the ground of financial hardship. However, the guaranty agency is not required to consider such an objection and provide the borrower with a hearing until at least six months after the agency issued the most recent garnishment order, either one for which the borrower did not request a hearing or one that was issued after a hardship-related hearing determination. The agency may provide a hearing in extraordinary circumstances earlier than six months if the borrower's request for review shows that the borrower's financial circumstances have substantially changed after the garnishment notice because of an event such as injury, divorce, or catastrophic illness.

(A) ~~An~~ The employer served with a garnishment order from the guaranty agency shall deduct and pay to the agency from a borrower's wages an amount that does not exceed the lesser of 15 –

(1) The amount percent specified in the order; or

(2) of the borrower's disposable pay for each pay period of T the amount permitted by 15 U.S.C. 1673 – that is, the lesser of 25 percent of the borrower's disposable pay or the amount by which the borrower's disposable pay exceeds 30 times the minimum wage (see 29 CFR 870.10) unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the borrower's compensation from the employer remaining after the deduction of any amounts required by law to be withheld.

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(O) As specified in section 488A(a)(8) of the HEA, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(M) If a borrower's pay is subject to more than one garnishment order-

(1) Unless other Federal law requires a different priority, the employer must pay the agency the amount calculated under (b)(9)(i)(L) before the employer complies with any later garnishment orders, except a family support withholding order.

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(2) If an employer is withholding from a borrower's pay based on a garnishment order served on the employer before the guaranty agency's order, or if a withholding order for family support is served on an employer at any time, the employer must comply with the agency's garnishment order by withholding an amount that is the lesser of –

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(I) the amount specified in the order or;

(II) the amount calculated under (b)(9)(i)(L)(2) less the amount or amounts withheld under the garnishment order or orders that have priority over the agency's order.

(3) If a borrower owes debts to one or more guaranty agencies, each agency may issue a garnishment order to enforce each of those debts. However, no agency may order withholding of a total amount for all its claims that exceeds 15 percent of the borrower's disposable wages. The employer must honor these orders as provided in (b)(9)(M)(1) and (2).

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(4) An employer may withhold and pay a greater amount than required under the order if the borrower gives the employer written consent.

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(N) A garnishment order is effective until the guaranty agency rescinds the order or the agency has fully recovered the amounts owed by the borrower, including interest, late fees, and collections costs. If an employer is unable to honor a garnishment order because the amount available for garnishment is insufficient to pay any portion of the amount stated in the order, the employer must notify the agency and comply with the order when sufficient disposable pay is available. Upon full recovery of the debt, the agency shall send the borrower's employer notification to stop wage withholding.

(O) The guaranty agency shall sue any employer, after receipt of the garnishment notice provided by the agency under paragraph (b)(9)(i)(H) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(G)P) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. The borrower has the burden of informing the guaranty agency of the circumstances surrounding the borrower's involuntary separation from employment.

(H)Q) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

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(R) The notice given to the employer under paragraph (b)(9)(i)(H) of this section must contain only the information as may be necessary for the employer to comply with the withholding order.

(S)(1) A guaranty agency may use third-party servicer or collection contractor to perform administrative activities associated with administrative wage garnishment, but may not allow such a party to conduct required hearings or to determine that a withholding order is to be issued.

(2) Only an authorized official of the agency may determine that an individual withholding order is to be issued. The guarantor must record the official's determination for each order it issues, including any order which it causes to be prepared or mailed by a third-party servicer or collection contractor. The guarantor must evidence the official's approval, either by including the official's signature on the order or, if the agency uses a form of withholding order that does not provide for execution by signature, by retaining in the agency's records the identity of the approving official, the date of the approval, the amount or rate of the order, the name and address of the employer to whom the order was issued, and the debt for which the order was issued.

(3) The withholding order must identify the guaranty agency as the holder of the debt, as the issuer of the order, and as the sole party legally authorized to issue the withholding order. If a guaranty agency uses a third-party servicer or collection contractor to prepare and mail a withholding order that includes the name of the servicer or contractor that prepared or mailed the order, the guaranty agency shall also ensure that the order contains no captions or representations that the servicer or contractor is the party that issued, or was empowered by Federal law or by the agency to issue, the withholding order.

(T) As specified in section 488A(a)(8) of the HEA, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) For purposes of paragraph (b)(9)—

(A) References to "the borrower" in this paragraph include all endorsers on a loan.

(B) The term "day" means calendar day.

(C) The term "disposable pay" means that part of a borrower's compensation for personal services, whether or not denominated as wages from an employer, that remains after the deduction of health insurance premiums and any amounts required by law to be withheld, and includes, but is not limited to, salary, bonuses, commissions, or vacation pay. "Amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld under a court order.

(D) Employer means a person or entity that employs the services of another and that pays the latter's wages or salary and includes, but is not limited to, State and local governments, but does not include an agency of the Federal Government.

(E) Financial hardship means an inability to meet basic living expenses for goods and services necessary for the survival of the borrower and the borrower's spouse and dependents.

(F) Garnishment means the process of withholding amounts from an employee's disposable pay and pays to a creditor in satisfaction of a withholding order.

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(G) Withholding order means any order for withholding or garnishment of pay issued by the guaranty agency and may otherwise be referred to as “wage garnishment order” or “garnishment order”.