**Issue Paper 6**

**Session 1: November 13 - 15, 2017**

**Issue:** False Certification

**Statutory cites:** §437(c) of the Higher Education Act of 1965, as amended (HEA)

**Regulatory cites:** 34 CFR 685.215

**Summary of issue:**

The HEA provides that if a student’s eligibility to borrow “was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft . . . then the Secretary shall discharge the borrower’s liability on the loan (including interest and collection fees).” Section 437(c) of the HEA, 20 U.S.C. § 1087(c)(1). The corresponding Direct Loan Program regulation states that a borrower’s loans are discharged when “a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan.” 34 CFR 685.215(a)(1).

A student’s eligibility to borrow has been falsely certified by the school if the school:

* Certified the student’s eligibility for the loan on the basis of the borrower’s ability to benefit from the institution’s training and the student did not meet the eligibility requirements;
* Signed the borrower's name on the loan application or promissory note without the borrower's authorization;
* Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet the requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended;
* Certified the borrower's eligibility for a Direct Loan as a result of the crime of identity theft committed against the borrower; or
* Without the borrower’s authorization, endorsed the borrower’s loan check or signed the borrower’s authorization for electronic transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

The Secretary also has the discretion to discharge a loan for false certification “without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge” 34 CFR 685.215(c)(7).

Question for consideration by the committee:

* Should the false certification regulation be changed to include other circumstances under which a borrower’s student loan would be considered to have been falsely certified?