

Issue Paper 5
Session 3: February 12 - 15, 2018

Issue: Closed School Discharge
Statutory cites: §437(c) of the Higher Education Act of 1965, as amended
Regulatory cites: 34 CFR 674.33(g), 682.402(d), and 685.214

Summary of change:

Amends the application requirements for closed school discharges to reflect current practice, which requires that a borrower applying for a closed school discharge submit a completed application form, rather than a sworn statement. The proposed regulations also would expand the window for closed school discharges from 120 days to 150 days, and provide for Departmental review of a closed school discharge claim denied by a guaranty agency.

Changes: See regulatory text below.

§_674.33 Repayment.

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(g) *Closed school discharge—(1) General.*

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(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 on an~~ a completed application on the form approved by the Secretary and sworn statement, and the factual assertions in the application statement must be true. ~~The statement~~ application need not be notarized but all statements made therein must be and made by the borrower under penalty of perjury. ~~In the statement~~ The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower ~~to~~ must—

(i) ~~State~~ Certify 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~~ 150 days before the school closed. The Secretary may extend the ~~120~~ 150-day period if the Secretary determines that exceptional circumstances related to the school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: revocation or withdrawal by an accreditation accrediting agency of the school's institutional ~~the school's loss of~~ accreditation; ~~t~~ The school's discontinuation of the majority of its academic programs; the State's revocation or withdrawal action by the State of to ~~revoke~~ the school's license to operate or to award academic credentials in the State; or a nondefault, contested Federal or State court judgment issued by a court of competent jurisdiction, or an

~~adjudication finding by a Federal or State administrative agency~~ ~~by a State or Federal government agency~~ concluding that the school violated State or Federal law; and

(C) Did not complete and is not in the process of completing the program of study through a teach-out 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;

* * * * *

(v) If the borrower fails to submit the application 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.

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§ 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 120150 days prior to the date the school closed. The Secretary may extend the 120150-day period 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: revocation or withdrawal by an accrediting agency of the school's institutional accreditation; ~~the school's loss of accreditation~~; the school's discontinuation of the majority of its academic programs; the State's revocation or withdrawal action by the State to revoke the school's license to operate or to award academic credentials in the State; or a nondefault, contested Federal or State court judgment issued by a court of competent jurisdiction, or an adjudication finding by a Federal or State administrative agency ~~State or Federal government agency~~ concluding that the school violated State or Federal law.

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(6) ***

(ii) ***

(B) If a guaranty agency determines that a school appears to have closed, it ~~shall~~, must 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 120150 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~~must—

(1) Notify all lenders participating in its program to mail a discharge application approved by the Secretary 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) application 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 120150 days prior to the closure date, and mail a discharge application ~~and an explanation of the information that must be included in the application sworn statement (which may be combined)~~ to the borrower. The application ~~shall~~informs the borrower of the procedures and eligibility criteria for obtaining a discharge.

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(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~~must notify the borrower in writing of that determination, ~~and~~ the reasons for ~~it~~the decision, and how the borrower may ask the Secretary to review the decision 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 120150 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~~.

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(G) Upon receipt of a closed school discharge claim filed by a lender, the agency ~~shall~~must review the borrower's ~~request and supporting sworn statement completed application~~ in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and ~~shall~~must 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~~must pay the claim in accordance with § 682.402(h) not later than 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~~ must, not later than 90 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~~ completed application described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender or guaranty agency ~~shall~~ must resume collection and ~~shall~~ must 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 § 682.202(b), any interest accrued and not paid during that period.

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(J)(1) Within 30 days after receiving the borrower's request for review of its decision that the borrower did not qualify for a discharge under paragraph (d)(6)(ii)(F) of this section, the agency must forward the borrower's discharge request and all relevant documentation to the Secretary.

(2) After reviewing the documents provided by the agency, the Secretary notifies the agency and the borrower of the decision on the borrower's application for a discharge. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being informed of the Secretary's decision, the agency must take the actions described in paragraph (d)(6)(ii)(H) of this section, as applicable.

(3) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency must, within 30 days after being so informed of the Secretary's decision, take the actions required under paragraphs (d)(6)(ii)(E) and (d)(6)(ii)(G)(1) of this section and the lender must take the actions described in paragraph (d)(7)(iv) of this section, as applicable.

§685.214 Closed school discharge.

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(c) *Borrower qualification for discharge.* (1) In order to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a ~~written request and sworn statement~~ completed application, and the factual assertions in the ~~statement~~ application must be true and made by the borrower under penalty of perjury. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower ~~to~~ must—

(i) State Certify that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986 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~~ 150 days before the school closed. The Secretary may extend the ~~120~~ 150-day period 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 revocation or withdrawal by an accrediting agency of

~~the school's institutional loss of accreditation; the school's discontinuation of the majority of its academic programs; revocation or withdrawal of action by the State to revoke the school's license to operate or to award academic credentials in the State; or a nondefault, contested Federal or State court judgment issued by a court of competent jurisdiction or adjudication finding by a Federal or State administrative agency by a State or Federal government agency concluding~~ that the school violated State or Federal law; 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;

* * * * *

(f) *Discharge procedures.*(1) After confirming the date of the school's closure, the Secretary identifies any Direct Loan borrowers (or students on whose behalf a parent borrowed) who appears to have been enrolled at the school on the closure date or to have withdrawn not more than ~~150~~120 days prior to the closure date.

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-(4) If a borrower fails to submit ~~the written request and sworn statement~~ a completed application described in paragraph (c) of this section within 60 days of the Secretary's mailing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

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