

Issue Paper 6
Session 3: February 12-15, 2018

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 change: Amends application requirements for false certification discharges to reflect current practice, which requires that a borrower applying for a false certification discharge submit a completed application form, rather than a sworn statement. The proposed regulations also update the regulatory requirements regarding false certification of eligibility of non-high school graduates for Direct Loans.

Changes: See regulatory text below.

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment

(a) *Basis for discharge—(1) False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified ~~the student's~~ eligibility for a Direct Loan ~~on the basis of ability to benefit from its training and the for a~~ student ~~who did not have a high school diploma or its recognized equivalent and~~ did not meet the ~~alternative eligibility requirements~~ ~~eligibility requirements~~ described in 34 CFR part 668 and section 484(d) of the Act, ~~as~~ applicable ~~at the time the loan was originated~~;

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(c) *Borrower qualification for discharge.* In order to qualify for discharge under this section, the borrower must submit to the Secretary ~~an application for discharge on a form approved by the Secretary,~~ and the factual assertions in the ~~application statement~~ ~~must be true and made under penalty of perjury.~~ ~~The statement~~ ~~application need not be notarized, but all statements made therein must be made by the borrower under penalty of perjury~~ In the ~~application statement,~~ the borrower's ~~responses must demonstrate to the satisfaction of the Secretary that the~~ ~~must meet the~~ requirements in paragraphs (c) (1) through (6) of this section ~~have been met.~~

(1) ~~Ability to benefit~~ ~~High school diploma or equivalent.~~ In the case of a borrower requesting a discharge based on ~~not having had a high school diploma and not having met the alternative eligibility requirements~~ ~~defective testing of the student's ability to benefit,~~ the ~~application requires the~~ borrower ~~must state~~ ~~must certify~~ that the borrower (or the student on whose behalf a parent borrowed)—

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

(ii) Received a Direct Loan at that school, ~~and on the basis of an ability to benefit from the school's training and~~ did not ~~meet~~ have a high school diploma or its recognized equivalent, and did not meet the ~~alternative to graduation from high school~~ eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act, ~~as~~ applicable at the time the loan was originated;

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(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary ~~provides mails~~ the borrower ~~and disclosure the~~ application described in paragraph (d), ~~and an~~ The application, which explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit ~~the written request and sworn statement~~ a completed application described in paragraph (c) of this section within 60 days of the date the Secretary suspended collection efforts ~~Secretary's mailing the disclosure 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.

(3) If the borrower submits ~~at the written request and sworn statement~~ completed application described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the ~~request and sworn statement~~ application in light of information available from the Secretary's records and from other sources, ~~including including, but not limited to,~~ guaranty agencies, State authorities, and cognizant accrediting associations.

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