



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper #11: False Certification Discharge
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Issue: Improving Borrower Access to False Certification Discharges

Statutory cites: §437(c)(1) of the Higher Education Act of 1965, as amended

Regulatory cites: 34 CFR 685.215

Summary of issues: Under Section 437(c)(1) of Higher Education Act or 1965, as amended, the Secretary of Education is authorized to grant a false certification discharge to Direct Loan and FFELP loan borrowers if the borrower's eligibility to borrow was falsely certified by the school or was falsely certified due to the crime of identity theft. In general, a borrower may qualify for a false certification discharge if:

- (1) The borrower did not have a high school diploma or its recognized equivalent and did not meet the applicable alternative eligibility criteria;
- (2) The borrower had a status (physical or mental condition, age, criminal record, or other circumstance) that disqualified them from meeting the legal requirements for employment in the occupation for which the training program supported by the loan was intended;
- (3) The school signed the borrower's name on the loan application or promissory note without authorization;
- (4) The borrower was a victim of identity theft.

The Direct Loan false certification regulations contain separate requirements for loans first disbursed before July 1, 2020, and loans first disbursed on or after July 1, 2020, as well as requirements that apply to both cohorts. Different false certification discharge requirements for different cohorts of borrowers are confusing to borrowers, create equity issues and are challenging for the Department to implement.

Areas related to eligibility criteria where there are different standards for loans disbursed before July 1, 2020, and loans disbursed on or after July 1, 2020, include:

- A borrower qualifies for the discharge if the borrower did not have a high school diploma and did not satisfy the alternative to high school diploma requirements at the time the school *certified* the loan (for loans disbursed before July 1, 2020) or at the time the school *disbursed* the loan (for loans disbursed on or after July 1, 2020).
- For loans disbursed before July 1, 2020, a borrower qualifies for the discharge if the school falsely certified the borrower's high school graduation status or falsified a high school diploma for the borrower. For loans disbursed on or after July 1, 2020, the false certification regulations do not contain the explicit provision for high school diplomas that were falsified by the institution.
- For loans disbursed before July 1, 2020, a borrower would be eligible for a false certification discharge if they reported to the institution that they did not have a valid high school diploma or

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its equivalent at the time the loan was certified. Eligibility would include a circumstance where the borrower was then coerced or deceived into signing an attestation that they did in fact have a high school diploma or equivalent. For loans disbursed on or after July 1, 2020, a borrower is precluded from seeking a false certification discharge if they signed such an attestation, regardless if there was coercion or deception by the school.

- For both loans disbursed before July 1, 2020, and loans disbursed on or after July 1, 2020, the Secretary may discharge the loan without an application based on information in the Secretary's possession. However, for loans disbursed before July 1, 2020, the Secretary may determine to grant such a discharge based on a school's falsification of Satisfactory Academic Progress (SAP).
- The false certification discharge for loans disbursed before July 1, 2020 include specific provisions related to the discharge of loans due to a disqualifying status (e.g., age, criminal record). The regulations for loans disbursed on or after July 1, 2020 are unclear regarding the ability of a borrower to seek a false certification discharge for a disqualifying status.
- The disqualifying condition requirements pertaining to loans disbursed before July 1, 2020, do not account for barriers to employment (particularly for those with a criminal record) that exist in many fields that do not rise to the level of a state legal requirement, such as requirements for professional licensure standards.

Certain application procedures are different for loans disbursed before July 1, 2020, and loans disbursed on or after July 1, 2020. These include:

- For loans disbursed before July 1, 2020, a borrower's loan is placed into forbearance once the borrower has requested a false certification discharge application. For loans disbursed on or after July 1, 2020, a borrower's loan is placed into forbearance once the Secretary determines that a borrower may be eligible for a false certification discharge
- For loans disbursed before July 1, 2020, if the borrower submits the loan application within 60 days of the Secretary providing the application the loan will remain in forbearance while the Secretary reviews and makes a decision on the application, even if the original application was incomplete. For loans disbursed on or after July 1, 2020, the regulations specify that the borrower must submit a *completed* application within the 60-day timeframe.
- For loans disbursed before July 1, 2020, the Secretary issues a decision that explains the reasons for any adverse determination, describes the evidence on which the decision was made, and provides the borrower, upon request, with copies of the evidence used in making the determination. The Secretary considers any response and additional information provided by the borrower and notifies the borrower whether the determination is changed. For loans disbursed on or after July 1, 2020, the Secretary issues a decision that explains the reasons for any adverse determination on the application but is not required to provide the evidence used or consider any additional evidence provided by the borrower.

Several provisions of the false certification discharge regulations apply to both loans disbursed before July 1, 2020, and loans disbursed on or after July 1, 2020. Some of the provisions relating to unauthorized loan, unauthorized payment, and identify theft are overly burdensome to borrowers. These include:

- Provisions relating to unauthorized loan or unauthorized payments require borrowers to provide signature specimens as evidence that they did not sign the loan application or promissory note. The borrower is required to provide five different signature specimens, and two of the specimens must be within one year of the date of the contested signature.

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- Borrowers applying for a discharge due to identity theft must provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower was the victim of identity theft. A court judgment is a very high bar for individuals to meet, as it requires resources to address the issue in the courts.
- In some cases, signature specimens are required for borrowers applying for the discharge due to identity theft.

Solutions: The Department proposes one set of regulatory standards to cover all false certification discharge claims. This would provide more clarity to borrowers and ensure that all borrowers applying for false certification discharges are treated under the same standards. To address the specific issues identified above, the Department proposes the following solutions:

Use the borrower's status regarding having a high school diploma or its recognized equivalent or meeting the alternative to graduation from high school eligibility requirements at the time the loan was originated (i.e., the school has certified the loan and the loan was created within the FSA system), not at the time the loan was disbursed. Use of this standard will ensure that students do, in fact, meet the Title IV eligibility requirements and that institutions do not authorize loan disbursements to ineligible students.

Explicitly state in the regulations that all loans may qualify for the discharge based on a false certification of high school diploma or equivalent by the school. Although the regulations applicable to loans disbursed on or after July 1, 2020, still allow implicitly for false certification discharges based on falsifications by the institution, revising the regulatory language to state this explicitly will ensure clarity for borrowers.

Rescind the provision in the regulations that any borrower who attested to having a high school diploma or equivalent does not qualify for a false certification discharge. This will ensure that borrowers can seek a discharge, through the false certification regulations if they were coerced or deceived by their school and had reported not having a valid high school diploma or equivalent.

Specify that the Secretary may grant a false certification discharge without an application due to falsification of Satisfactory Academic Progress for all loans. This would provide clarity to borrowers and institutions and ensure that all borrowers are treated under the same standards.

Include disqualifying status as a false certification discharge condition for all loans. This would ensure that all borrowers applying for false certification discharges are treated under the same standards. In addition, the Department invites the negotiating committee to discuss whether to expand the disqualifying status provision to include de facto barriers to employment that exist in many fields, but do not rise to the level of a State legal requirement, such as employment restrictions for those with a criminal record, or requirements for professional licensure standards.

Require borrowers to submit an application within 60-days of their loan being placed into forbearance but allow borrowers an additional 30-days to submit supplemental information. Borrowers may request, and the Secretary will provide, the evidence used by the Secretary in making the determination on their discharge. Explicitly state that borrowers can submit additional information to the Secretary for reconsideration if they have received a negative decision. To ensure that borrowers are given a chance to put the strongest case forward, borrowers who submit incomplete applications would be given an additional 30-days to amend their application and provide supplemental information. If a borrower does not amend their application after 30 days, the claim would be closed as incomplete and collection would resume on the loan. The borrower would still have the option to reapply. Borrowers must also be able to

access any of the evidence used in determining whether they will receive a discharge (e.g., information provided by the school) to help inform any requests for reconsideration.

Remove the requirements that borrowers submit signature specimens when applying for discharge due to unauthorized loan, unauthorized payment, or identity theft. The Department would continue to allow borrowers to voluntarily submit signature specimens as evidence if the borrower feels the signature specimens strengthen their case.

Replace the requirement that a borrower provide a judicial determination of identity theft with alternative evidence, such as through the FTC Identity Theft Affidavit process, filing a police report, or disputing the loan through all three credit bureaus. The Department may need to include multiple measures for a borrower to fully prove identity theft as one single measure (e.g., the FTC Identity Theft Affidavit) may be too weak of a standard to use as a basis for a loan discharge.

Proposed Regulations

For the convenience of the Committee, the Department is providing the false certification discharge regulatory language for the Direct Loan Program. We will provide draft revisions to the regulatory language, incorporating the Department's proposals at a later negotiated rulemaking session.

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

(a) *Basis for discharge* -

(1) *False certification.* For loans first disbursed before July 1, 2020, the Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school -

(i) Certified the eligibility of a student who -

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

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act that were in effect at the time of certification;

(ii) For loans first disbursed before July 1, 2020, certified the eligibility of a student who is not a high school graduate based on -

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

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

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

(iv) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended;

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(5)(ii) of this section; or

(vi) For loans first disbursed on or after July 1, 2020, certified eligibility for a Direct Loan for a student who did not have a high school diploma or its recognized equivalent and did not meet the alternative eligibility requirements described in 34 CFR part 668 and section 484(d) of the Act applicable at the time of disbursement.

(2) *Unauthorized payment.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan if the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, unless the proceeds of the loan were delivered to the student or applied to charges owed by the student to the school.

(b) *Relief pursuant to discharge.*

(1) Discharge for false certification under paragraph (a)(1) of this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges and collection costs with respect to the loan.

(2) Discharge for unauthorized payment under paragraph (a)(2) of this section relieves the borrower of the obligation to repay the amount of the payment discharged.

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

(4) The Secretary does not regard a borrower who has defaulted on a loan discharged under this section as in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the Act.

(5) The Secretary reports the discharge under this section to all consumer reporting agencies to which the Secretary previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(c) *Borrower qualification for discharge.* This paragraph (c) applies to loans first disbursed before July 1, 2020. To qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraph (c)(1) through (7) of this section have been met. If the Secretary determines the application does not

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meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act applicable at the time the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan) -

(i) Reported not having a valid high school diploma or its equivalent at the time the loan was certified; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable at the time the institution certified the loan.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) -

(i) Did not meet State requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(ii) [Reserved]

(3) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must -

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(4) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower must -

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature;

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(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(5) *Identity theft.*

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

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

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

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide -

(1) Authentic specimens of the signature of the individual, as provided in paragraph (c)(2)(ii) of this section, or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(2) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

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

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

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

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

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

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

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

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

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

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

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

(d) *Discharge procedures.* This paragraph (d) applies to loans first disbursed before July 1, 2020.

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

(2) If the borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

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

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

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

(e) *Borrower qualification for discharge.* This paragraph (e) applies to loans first disbursed on or after July 1, 2020. In order to qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary, and the factual assertions in the application must be true and made under penalty of perjury. In the application, the borrower must demonstrate to the satisfaction of the Secretary that the requirements in paragraphs (e)(1) through (6) of this section have been met.

(1) *High School diploma or equivalent.*

(i) 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, the borrower must certify that the borrower (or the student on whose behalf a parent borrowed) -

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

(B) Received a Direct Loan at that school and did not 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 applicable at the time of disbursement.

(ii) A borrower does not qualify for a false certification discharge under this paragraph (e)(1) if -

(A) The borrower was unable to provide the school with an official transcript or an official copy of the borrower's high school diploma or the borrower was home schooled and has no official transcript or high school diploma; and

(B) As an alternative to an official transcript or official copy of the borrower's high school diploma, the borrower submitted to the school a written attestation, under penalty of perjury, that the borrower had a high school diploma.

(2) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must -

(i) State that he or she did not sign the document in question or authorize the school to do so; and

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature.

(3) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower must -

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(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so;

(ii) Provide five different specimens of his or her signature, two of which must be within one year before or after the date of the contested signature; and

(iii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(4) *Identity theft.*

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

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

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

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identity theft; and

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime of identity theft, provide -

(1) Authentic specimens of the signature of the individual, as provided in paragraph (e)(2)(ii) of this section, or of other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(2) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

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

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

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

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

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

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

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

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

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

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

(7) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge.

(f) *Discharge procedures.* This paragraph (f) applies to loans first disbursed on or after July 1, 2020.

(1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower the application described in paragraph (e) of this section, which explains 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 a completed application within 60 days of the date the Secretary suspended collection efforts, 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 a completed application, the Secretary determines whether to grant a request for discharge under this section by reviewing the application in light of information available from the Secretary's records and from other sources, including, but not limited to, the school, guaranty agencies, State authorities, and relevant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

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(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination, and resumes collection.