

**Issue Paper 10**  
**Session 3: March 16-18, 2016**

**Issue:** Whether to revise the closed school discharge regulation to ensure borrowers are aware of and utilize their ability to receive a closed school discharge

**Statutory Cite:** Section 437(c) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087(c)

**Regulatory Cite:** Section 674.33(g), Section 682.402(d), Section 685.214(f), Section 668.14(b)

**Summary of Issue:** Many borrowers eligible for a closed school discharge under Section 437(c) of the HEA do not apply. There are concerns that borrowers are unaware of their possible eligibility for discharge because of a lack of outreach and information about available relief, or that borrowers are not informed by the closing school about the option for discharge alongside the ability to attend a teach-out. Currently, the Secretary sends identified eligible borrowers an application and an explanation of qualification and procedures to obtain a discharge. Schools also conduct teach-outs in accordance with their accreditor's standards. Further, under FFEL program regulations, a borrower cannot request a review of guaranty agency determinations of a borrower's eligibility for a closed school discharge by the Secretary. By amending the regulations to provide for more outreach, disclosure of a borrower's options in a teach-out situation, and review by the Secretary of guaranty agency determinations, we hope to increase the uptake of borrowers who apply and receive a closed school discharge.

**Proposed Changes:** See attached regulatory text.

**§668.14 Program participation agreement.**

(b) \*\*\*

\_(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34

CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of

the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under §668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations; and

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(32) The institution will provide all enrolled students with a closed school discharge application and a written disclosure describing the benefits and consequences of a closed school discharge as an alternative to completing their educational program through a teach-out agreement, as defined in 34 CFR 602.3, upon submitting a teach out plan after the occurrence of any of the following events:

(i) The initiation by the Secretary of an action to terminate the participation of an institution in any title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under section 668.83; or

(ii) The occurrence of any of the events in in paragraph (b)(31)(ii) – (v) of this section.

**§674.33**

*(g) Closed School Discharge*

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(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;

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

(iii) Based on information in the Secretary's possession, the borrower did not subsequently re-enroll in any Title IV-eligible institution after a period of five years from the date the school closed.

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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 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 §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) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(vii) 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.

(viii) 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)~~ (ix) 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*—

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(6)(ii)(A)

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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 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.

(G) 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,~~ the opportunity for review by the Secretary, and an explanation of the manner in which to request such a review, 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 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.~~

(H) If a borrower described in paragraph (d)(6)(i)(E) or (F) 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 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 §682.202(b), any interest accrued and not paid during that period.

(I) Upon resuming collection on any affected loan, the lender or guaranty agency provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(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.

(K) Guaranty agency responsibilities if a borrower requests a review by the Secretary.

(i) Within 30 days after receiving the borrower's request for review under paragraph(d)(6)(ii)(F) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for review.

(ii) The Secretary notifies the agency and the borrower of a determination upon review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraph (ii)(H)(i)(I) or (d)(6)(ii)(I) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (d)(6) and (d)(7) of this section, as applicable.

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(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 685.214 under the William D. Ford Federal Direct Loan Program; or

(ii) 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; or

(iii) Secretary or guaranty agency determines, based on information in their possession, that the borrower did not subsequently re-enroll in any institution after a period of five years from the date the Secretary or the guaranty agency identified and contacted the borrower under paragraph (d)(6)(ii)(B)(1) and (2) of this section.—

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**§ 685.214 Closed school discharge.**

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(c) Borrower qualification for discharge.

(1) \* \*\*

(2) The Secretary ~~may~~ discharges a loan under this section without an application from the borrower if:

(i) The Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge; or

(ii) The Secretary determines, based on information in the Secretary's possession, that the borrower did not subsequently re-enroll in any institution after a period of five years from the date the Secretary identified and contacted the borrower under paragraph (f)(1) of this section.

(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 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~~application described in paragraph (c) of this section within 60 days of the Secretary's ~~mailing~~providing 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.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

~~(6)~~ 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.

~~(7)~~ 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.