



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Proposed Regulatory Text for Issue Paper #11: False Certification Discharge
Session 2: November 1-5, 2021

§ 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, t~~he 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 and 34 CFR -part 668 that were in effect ~~at the timewhen the loan was originated~~of certification;

(ii) ~~For loans first disbursed before July 1, 2020, c~~ertified 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;

(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; or

(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)(~~65~~(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.

(3) *Loan origination.* For purposes of this section, a loan is originated when the school submits the loan record to the Department's Common Origination and Disbursement (COD) System. Before originating a Direct Loan, a school must determine the student's or parent's eligibility for the loan. For each Direct Loan that a school disburses to a student or parent, the school must first submit a loan award record to the COD system and receive an accepted response. :

(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 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 and 34 CFR part 668 applicable at the time when 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 when~~ the loan was ~~originated~~ 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 when~~ the ~~institution~~ certified loan was originated.

(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; 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;~~

~~(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)~~ ~~(iii)~~ Provide a statement of facts and supporting evidence 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. Such statement include as Supporting evidence may include—

(A) A judicial determination of identity theft;

(B) A Federal Trade Commission identity theft affidavit;

(C) A police report alleging identity theft;

(D) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(E) Other evidence acceptable to the Secretary.

(6) Definition of identity theft. (i) ~~(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)~~ (A) 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)~~ (B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

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

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

(67) *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.

(78) *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).

(89) *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 for discharge and supporting information 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 an application for discharge that the -Secretary determines is incomplete, the Secretary notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the Secretary the borrower's application is closed as incomplete and the Secretary resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(34) If the borrower submits ~~the~~ a completed 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.

(45) 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.

(56) 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.

(7) A borrower is not precluded from re-applying for a discharge under paragraph (c) of this section if the discharge request is closed as incomplete, or if the Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

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~~(c) Borrower qualification for discharge. This paragraph (c) 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 (c)(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—~~

~~(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; 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; 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.~~

~~(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.~~

~~(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.~~