



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

**Issue Paper #2: Closed School Discharge**  
**Session 1: October 4-8, 2021**

**Issue:** Improving Borrower Access to Closed School Discharges

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

**Regulatory cites:** 34 CFR 685.214

**Summary of issues:** Under Section 437(c)(1) of Higher Education Act or 1965, as amended, the Secretary of Education is authorized to discharge the loans of certain borrowers when a school closes. To qualify for a closed school discharge, a borrower must have been enrolled at the institution on the date of its closure or have withdrawn no more than 120 days prior to its closure (180 days for loans made on or after July 1, 2020). They must not have graduated from the school or transferred their credits to complete the same or a comparable program at another school.

The Secretary may grant closed school discharges to borrowers who left the school more than 120 days or 180 days before its closure, as applicable, if the Secretary determines that exceptional circumstances justify such an extension. A non-exhaustive list of exceptional circumstances is provided in the regulations.

The Department's regulations also provide for automatic closed school discharges for borrowers who attended an institution that closed between November 1, 2013, and July 1, 2020, if the borrower did not subsequently re-enroll in any Title IV-eligible institution within three years of the date the school closed.

The Department is concerned that several aspects of the closed school discharge process have limited the ability of borrowers to receive closed school discharges:

- Final regulations published in the Federal Register on November 1, 2016, provided for automatic closed school discharges to borrowers who were eligible for a closed school discharge but did not apply for one, and who did not enroll elsewhere within three years of the institution's closure. Final regulations published on Sept. 23, 2019, eliminated this provision.
- For borrowers who withdrew from a school prior to the school closing, the discharge windows are not consistent across years. The Sept. 23, 2019, closed school discharge regulations set the closed school discharge window at 180 days for any loans made on or after July 1, 2020. Prior to that date, the window was 120 days.
- Under §685.214(c)(1)(i)(B), the Secretary may extend the closed school discharge window under "exceptional circumstances." The non-exhaustive list of exceptional circumstances provided in the regulations does not include many events that may occur on the path to closure and could reasonably be associated with closure. In addition, the Sept. 23, 2019, regulations removed some items that were included in the prior regulations, such as "a finding by a State or Federal government agency that the school violated State or Federal law."
- The term "comparable program" is not defined, nor are the standards for how many credits from a closed school would need to have been accepted by a transfer school to disqualify a

borrower for a closed school discharge. For a borrower who attended a closed school and then enrolled in another school, this can create uncertainty as to whether a borrower qualifies for a closed school discharge and can discourage borrowers from applying for the discharge.

**Solutions:** The Department believes closed school discharges are an important benefit to help borrowers get a fresh start when their institution closes. To achieve the goals of this benefit we propose the following initial solutions for discussion with the negotiating committee to make closed discharges more automatic and the terms of the program easier for borrowers to understand:

**Reinstate automatic closed school discharges.** Reinstate the automatic closed school discharges for borrowers who do not enroll elsewhere when an institution closes but reduce the period before automatic discharges occur from three years to one year following a closure.

This one-year period was the consensus of the non-federal negotiators during negotiations for the regulations published on November 1, 2016. The one-year wait out period for an automatic closed school discharge ensures that borrowers who immediately enroll elsewhere do not receive an automatic discharge but reduces the likelihood that an eligible borrower would go into default before receiving the automatic discharge.

**Establish a consistent window of eligibility for students who withdrew from a school before it closed.** Standardize the window of eligibility, regardless of the disbursement date of the loan, to 180 days.

**Define “comparable program” for purposes of a closed school discharge.** Due to data limitations that have changed over time, the Department proposes addressing this issue based upon when the school closed.

- **Institutions that closed prior to July 1, 2014:** Due to data limitations, borrowers who enrolled at another school would not be eligible for an automatic discharge. These borrowers would have to attest on an application that they did not enroll in a comparable program, which we would define as a program at the same credential level and in the same field of study and which accepted most of the credits transferred from the closed school. (**Note:** Before 2014 the Department does not have data on the program a borrower attended so we cannot use such data to make administrative determinations that a program was comparable.)
- **Institutions that closed between July 1, 2014 and June 30, 2019:** Borrowers who enrolled at another school would receive an automatic discharge if they did not enroll in a program at the same level and with the same four-digit Classification of Instructional Program (CIP) code as the program that they were enrolled in at the closed school. A borrower who attended a program with the same CIP code and level could still receive a discharge by submitting an application and stating on the application that they did not transfer most of their credits.
- **Institutions that closed after July 1, 2019:** Borrowers who enrolled at another school would receive a discharge so long as they did not accept and complete an accreditor approved teach-out program. This would define a “comparable program” to only include programs that are designed to be continuations of the program that the borrower was enrolled in at the closed school. The completion requirement also ensures that borrowers who try a teach out are not penalized if the borrower does not complete the teach out. The clock on the automatic

discharge window would be paused while the borrower is in the teach-out program and would restart after they leave the teach out if they do not finish.

**Expand the list of examples of exceptional circumstances.** We propose adding additional illustrative examples to the list of exceptional circumstances, while maintaining that the list is non-exhaustive. None of these would be binding but they would send clearer signals about how the Secretary may use this authority going forward. The additional illustrative examples may include:

- **A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students:** To restore an earlier provision but stated in a slightly clearer manner.
- **Accreditor actions besides loss of accreditation:** The institution is or was placed on probation or issued a show-cause order or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards.

#### **Proposed Regulations:**

To assist the Committee in discussing these issues, the Department is providing draft revisions to the closed school discharge regulatory language for the Direct Loan Program, incorporating the Department's proposals.

#### **§685.214 Closed school discharge.**

(a) *General.* (1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section—

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary; ~~and~~

(ii) "School" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible: and

(iii) "Comparable program" means---

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(A) For schools that closed before [MONTH/DAY/July 1, /2014] a program at the same credential level and in the same field of study that the borrower was enrolled in at the closed school and which accepted most of the credits transferred from the closed school.

(B) For schools that closed on or after [MONTH/DAY/July 1, 2014] and before [MONTH/DAY/June 30, 2019] a program at the same level and with the same Classification of Instructional Program (CIP) code as the program that the borrower was enrolled in at the closed school.

(C) For schools that closed on or after [MONTH/DAY/July 1, 2019] a program designed to be a continuation of the program that the borrower was enrolled in at the closed school.

(b) *Relief pursuant to discharge.* (1) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued charges or collection costs with respect to the loan.

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

(3) 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.

(4) The Secretary reports the discharge of a loan 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.* (1) For loans first disbursed before July 1, 2020, ~~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, a completed application~~ and the factual assertions in the ~~statement~~application must be true. ~~The statement need not be notarized but and~~ 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 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~~180 ~~calendar~~ days before the school closed. The Secretary may extend the ~~120~~180-day period if the Secretary determines that exceptional circumstances, ~~as described in paragraph (i) of this section, related to a school's closing~~ justify an extension. ~~Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and;~~ and

(C) Did not complete the program of study or a comparable program through ~~either an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, an approved teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;~~

(ii) State whether the borrower (or student) has made a claim with respect to the school's closing 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; and

(iii) State that the borrower (or student)—

(A) 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

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(2) For loans first disbursed on or after July 1, 2020, ~~in order~~ to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a completed application, and the factual assertions in the application must be true and made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(i) 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 July 1, 2020 to attend a school;

(B) Did not complete the program of study at that school because the school closed on the date that the student was enrolled, or the student withdrew from the school not more than 180 calendar days before the date that the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (i) of this section, 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 accreditation; revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State; the termination by the Department of the school's participation in a title IV, HEA program; the teach-out of the student's educational program exceeds the 180-day look-back period for a closed-school loan discharge; or the school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study or a comparable program;~~ and

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(C) Did not complete the program of study or a comparable program through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(ii) Certify that the borrower (or the student on whose behalf the parent borrowed) ~~has not accepted the opportunity to complete, or~~ is not continuing in; the program of study or a comparable program through either an institutional teach-out plan performed by the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

~~(3) If the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for the discharge of a loan under this section, the Secretary—~~

~~(i) May discharge the loan without an application from the borrower; and~~

~~(ii) With respect to schools that closed on or after November 1, 2013, and before July 1, 2020, will discharge the loan without an application from the borrower if the borrower did not subsequently re-enroll in any title IV eligible institution within a period of three one years from the date the school closed.~~

(d) *Cooperation by borrower in enforcement actions.* (1) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(e) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student)

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may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(f) *Discharge procedures.* The discharge procedures in this paragraph (f) apply to loans first disbursed before July 1, 2020.

(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 ~~120-180~~ 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 application described in paragraph (c) of this section within 60 days of the Secretary's 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.

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(g) *Discharge procedures.* The discharge procedures in this paragraph (g) apply to loans first disbursed on or after July 1, 2020.

(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 180 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 (g)(2) of this section.

(4) If a borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's 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) 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.

(6) 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, and resumes collection.

(h) *Discharge without an application.* (1) If the Secretary determines based on information in the Secretary's possession that the borrower qualifies for the discharge of a loan under this section, the Secretary may discharge the loan without an application from the borrower, if the borrower did not subsequently re-enroll in any title IV- eligible institution within a period of one year from the date the school closed.

(2) Notwithstanding paragraph (h)(1) of this section, a borrower who re-enrolled at another school does not qualify for a discharge without an application if the school the borrower was enrolled in—

(i) Closed before July 1, 2014];

(ii) Closed on or after July 1, 2014 and before June 30, 2019 and the borrower re-enrolled in a program at the same level and with the same four-digit CIP code as the program that the borrower was enrolled in at the closed school; or



(iii) Closed on or after July 1, 2019 and the borrower- accepted and completed -an approved teach out program.

(i) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(1) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(2) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(3) The termination by the Department of the school's participation in a title IV, HEA program;

(4) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(5) The teach-out of the student's educational program exceeds the 180-day look-back period for a closed school discharge;

(6) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study or a comparable program;

(7) the institution is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards;