



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

Proposed Regulatory Text for Issue Paper #2: Closed School Discharge
Session Three: December 6 -10, 2021

Part 674—Federal Perkins Loan Program

§ 674.33 Repayment.

(g) *Closed school discharge* - (1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section -

(A) A school's closure date is the earlier of the date that the school ceases to provide educational instruction in ~~all most~~ programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the ~~institution~~ school had ceased to provide educational instruction for most of its students;

(B) "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~~

(C) The "holder" means the Secretary or the school that holds the loan; and

(D) "Program" means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if:

(1) The enrollment occurred at the same ~~institution~~ school in closely proximate periods;

(2) The school granted a credential in a program while the student was enrolled in a different program; or

(3) The programs stack or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment.

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

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

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to have been in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all ~~credit bureaus~~ consumer reporting agencies to which the status of the loan was previously reported.

(3) ~~Determination of borrower qualification for discharge by the Secretary~~Discharge without an application. (i) The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application ~~from the borrower if the~~ from the borrower if the Secretary determines that -

(A) ~~The b~~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 685.214 (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; or

(B) ~~The Secretary determines that the borrower qualifies for a discharge B~~based on information in the Secretary's possession, ~~the borrower qualifies for a discharge~~ The Secretary discharges the loan without an application from the borrower if the borrower did not complete an institutional teach-out plan performed by the school or a teach-out agreement with another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) ~~With respect to schools that closed on or after November 1, 2013, the Secretary will discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application from the borrower if the Secretary determines that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed. If the borrower accepts but does not complete 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, then the Secretary discharges the loan within one year of the borrower's last date of attendance in the teach out program.~~

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, ~~in order~~ to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a ~~written request and sworn statement~~ a completed closed school discharge application on a form approved by the Secretary, and the factual assertions in the ~~application statement~~ application statement 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 borrower must~~ The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to -

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(i) State that the borrower--

(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 120180 days before the school closed. The Secretary may extend the 120180-day period if the Secretary determines that exceptional circumstances as described in paragraph (g)(9) of this section related to the 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~~

~~(C) Did not complete and is not in the process of completing~~On or after July 1, 2023, did not complete 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 the applicable, the school's State authorizing agency, the program of study through a teachout at another school as defined in 34 CFR 600.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means;

Commented [A1]: Removed language regarding re-enrollment/comparable program criterion, retaining only the completion of a teach-out agreement.

(ii) State whether the borrower 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 credited to the borrower's loan obligation; and

(iii) State that the borrower -

(A) Agrees to provide to the holder of the loan 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 (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.* (i) ~~In order to~~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 -

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

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

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

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who -

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

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

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, 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 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.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, 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.

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

(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~~180 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,

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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 ~~completed application a written request and sworn statement~~ described in paragraph (g)(4) of this section within ~~60~~90 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 and the reasons for the 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.

(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.

(x) 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.

(9) 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 school 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;

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

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

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

(6) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

Commented [A2]: Added State or Federal Court judgment in exceptional circumstances throughout all loan programs.

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

(8) 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;

(9) The school discontinued a significant share of its academic programs.

(10) The school permanently closed all or most of its ground-based locations while maintaining online programs.

(11) The school was placed on the heightened cash monitoring payment method as defined in section 668.162(d)(2).

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Part 682—Federal Family Education Loan (FFEL) Program

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§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

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(d) *Closed school - (1) General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than ~~120~~180 days prior to the date the school closed. The Secretary may extend the ~~120~~180-day period if the Secretary determines that exceptional circumstances, ~~as described in paragraph (d)(9) 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.~~

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(ii) For purposes of the closed school discharge authorized by this section –

(A) A school's closure date is the earlier of the date that the school ceases to provide educational instruction in ~~all~~ most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the institution/school had ceased to provide educational instruction for most of its students;

(B) The term “borrower” includes all endorsers on a loan; ~~and~~

(C) A “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-~~

(D) “Program” means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower’s program as multiple levels or Classification of Instructional Program codes if:

(1) The enrollment occurred at the same institution/school in closely proximate periods;

(2) The school granted a credential in a program while the student was enrolled in a different program; or

(3) The programs stack or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (d) of this section relieves the borrower of an existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is, or was otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all ~~credit~~ consumer reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (d)(8) of this section, ~~in order~~ to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a completed closed school discharge application on a form approved by the Secretary and the factual assertions in the application must be true and must be made under penalty of perjury. By signing the application, The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to state that the borrower (or the student on whose behalf a parent borrowed) —

certifies –

[NOTE: Subparagraphs (d)(3)(i),(ii), (iii) and (iv) are missing from the eCFR. We are proposing to replace the missing the subparagraphs as follows:]

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

(ii) 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 180 calendar days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (d) (9) of this section, justify an extension

(iii) On or after July 1, 2023, state that the borrower did not complete 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.

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

(A) Agrees to provide to the Secretary or the Secretary's designee 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 or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d)(5) of this section.

(4) Cooperation by borrower in enforcement actions. (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (d) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (d) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall -

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

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who –

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

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

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (d) of 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) 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, 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.

(ii) The provisions of paragraph (d) of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of such 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.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities – (i) Procedures applicable if a school closed on or after January 1, 1986, but prior to June 13, 1994.* (A) If a borrower received a loan for attendance at a school with a closure date on or after January 1, 1986, but prior to June 13, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's "Closed School Policy" as authorized by section IV of Bulletin 89-G-159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than August 13, 1994.

(C) A guaranty agency shall review its records and identify all schools that appear to have closed on or after January 1, 1986 and prior to June 13, 1994, and shall identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 120 days prior to the closure date.

(D) A guaranty agency shall notify the Secretary immediately if it determines that a school not previously known to have closed appears to have closed, and, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than 120 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall –

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that

must be included in the sworn statement (which may be combined) to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than 120 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(E) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(F) If a loan identified under paragraph (d)(6)(i)(D)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by June 13, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(i)(E) of this section.

(G) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(E) or (F) 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.

(H) 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 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.

(I) If a borrower described in paragraph (d)(6)(i)(E) or (F) of this section fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being

notified of that option, the 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 agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(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.

(ii) *Procedures applicable if a school closed on or after June 13, 1994.* (A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a school may have closed. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has closed and, within 30 days after receiving information indicating that the school may have closed, report the results of its investigation to the Secretary concerning the date of the school's closure and whether a teach-out of the closed school's program was made available to students.

(B) If a guaranty agency determines that a school appears to have closed, it shall, within 30 days of making that determination, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, appears to have been enrolled at the school on the closing date, or withdrew not more than ~~120~~180 days prior to the date the school appears to have closed. Within 30 days after receiving confirmation of the date of a school's closure from the Secretary, the agency shall –

(1) Notify all lenders participating in its program to mail a discharge application explaining the procedures and eligibility criteria for obtaining a discharge and an explanation of the information that must be included in the application to all borrowers who may be eligible for a closed school discharge; and

(2) Review the records of loans that it holds, identify the loans made to any borrower (or student) who appears to have been enrolled at the school on the school closure date or who withdrew not more than ~~120~~180 days prior to the closure date, and mail a discharge application and an explanation of the information that must be included in the application to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(C) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and notify the borrower that the agency will provide additional information about the procedures for requesting a discharge after the agency has received confirmation from the Secretary that the school had closed.

(D) If a loan identified under paragraph (d)(6)(ii)(B)(2) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, within one year after identifying the borrower, attempt to locate the borrower and further determine the borrower's potential eligibility for a discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the new address of a borrower who would still be considered potentially eligible for a

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discharge, the guaranty agency shall, within 30 days after learning the borrower's new address, mail to the borrower a discharge application that meets the requirements of paragraph (d)(6)(ii)(B) of this section.

(E) 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.

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) 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 how 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~~180 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.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's completed application in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations, and shall take the following actions –

(1) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (d) of this section, it shall pay the claim in accordance with § 682.402(h) not later than 90 days after the agency received the claim; or

(2) If the agency determines that the borrower does not qualify for a discharge, the agency shall, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(H) If a borrower described in paragraph (d)(6)(ii)(E) or (F) of this section fails to submit the completed application within ~~60~~90 days of being notified of that option, the lender or guaranty agency shall resume collection.

(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) (1) 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.

(2) The Secretary notifies the agency and the borrower of the 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 (d)(6)(ii)(H) or (I) of this section, as applicable.

(3) 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 actions required under paragraphs (d)(6)(ii)(E) and (d)(6)(ii)(G)(1) of this section, and the lender shall take the actions described in paragraph (d)(7)(iv) of this section, as applicable.

(7) *Lender responsibilities.* (i) A lender shall comply with the requirements prescribed in paragraph (d) of this section. In the absence of specific instructions from a guaranty agency or the Secretary, if a lender receives information from a source it believes to be reliable indicating that an existing or former borrower may be eligible for a loan discharge under paragraph (d) of this section, the lender shall immediately notify the guaranty agency, and suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments).

(ii) If the borrower fails to submit a completed application described in paragraph (d)(3) of this section within ~~60~~90 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period. Upon resuming collection, the lender provides the borrower with another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives a completed application described in paragraph (d)(3) of this section from the borrower, or notification from the agency that the Secretary approved the borrower's appeal in accordance with paragraph (d)(6)(ii)(K)(3) of this section.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all consumer reporting agencies to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a closed school discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(8) *Discharge without an application.* (i) A borrower's obligation to repay a FFEL Program loan may be discharged without an application from the borrower if the –

(A) 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

(B) 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. The Secretary or guaranty agency discharges the loan without an application from the borrower if the borrower did not complete 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.

~~(ii) With respect to schools that closed on or after November 1, 2013, a borrower's obligation to repay a FFEL Program loan will be discharged without an application from the borrower if the Secretary or guaranty agency determines that the borrower did not subsequently re-enroll in any title IV eligible institution within a period of three years after the school closed.~~

Commented [A3]: See above regarding removal of re-enrollment/comparable program criterion.

~~(ii) If the borrower accepts but does not complete 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, then the Secretary or guaranty agency discharges the loan within one year of the borrower's last date of attendance in the teach out program.~~

(9) 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 school 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;

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

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

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

(6) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

Commented [A4]: See above regarding inclusion of State or Federal court judgment.

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

(87) 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;

(98) The school discontinued a significant share of its academic programs.

(109) The school permanently closed all or most of its ground-based locations while maintaining online programs.

(119) The school was placed on the heightened cash monitoring payment method as defined in section 668.162(d)(2).

* * * * *

Part 685--William D. Ford Federal Direct Loan Program

* * * * *

§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 earlier of the date that the school ceases to provide educational instruction in ~~all~~ most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the institution ~~school~~ had ceased to provide meaningful educational instruction for most of its students; 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;

(iii) "Program" means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if:

(A) ~~The~~ enrollment occurred at the same institution in closely proximate periods;

(B) The school granted a credential in a program while the student was enrolled in a different program; or

(C) The programs stack or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment

~~and~~

~~(iii) "Comparable program" means~~

~~(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) 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 discharges 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 school's closure date, if the borrower did not complete 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.~~

~~(2) If a borrower accepts but does not complete 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, then the Secretary discharges the loan within one year of the borrower's last date of attendance in the teach out program.~~

~~(de) Borrower qualification for discharge. (1) Unless Except as provided in paragraph (h) of this section, 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 ~~120180~~ calendar days before the school closed. The Secretary may extend the ~~120180~~-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) On or after July 1, 2023, state that the borrower did not complete 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.~~

~~(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.

Commented [A5]: See above regarding removal of re-enrollment/comparable program criterion.

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~~(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~~

~~(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.~~

~~(e) Cooperation by borrower in enforcement actions. (1) ~~in order to~~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.

~~(fe) 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) 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.

~~(fh) 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 shall 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 school's closure date the school closed.~~

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

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(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 ~~90~~ 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.

~~(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~~

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~~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.~~

~~(28) Notwithstanding paragraph (fh)(41) 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 did not re-enroll 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 did not accept and complete an approved teach-out program.~~

~~(h) *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 institution school 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;~~

~~(23) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;~~

~~(43) The termination by the Department of the school's participation in a title IV, HEA program;~~

~~(54) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;~~

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~~(6) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;~~

Commented [A6]: See above regarding inclusion of State or Federal court judgment.

~~(576)~~ The teach out of the student's educational program exceeds the 180 day look back period for a closed school discharge;

~~(687)~~ 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;~~

~~(9698)~~ The school discontinued a significant share of its academic programs.

~~(97109)~~ The school permanently closed all or most of its ground-based locations while maintaining online programs.

~~(108110)~~ The school was placed on the heightened cash monitoring payment method as defined in section 668.162(d)(2).

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