



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Proposed Regulatory Text for Issue Paper #2: Closed School Discharge
Session 2: November 1-5, 2021

§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 had ceased to provide meaningful educational instruction for most of its students; and

Commented [A1]: Reflects ability to capture institutions that postpone closure date while otherwise essentially closing.

(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:

Commented [A2]: Addresses the issue of if a college chains programs together or awards retroactive credentials that could end up partly denying a borrower a discharge.

(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;

Closed school discharge proposed regulatory text session two 2

~~(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.~~

Commented [A3]: We have proposed to strike this section in the definitions, but leave it within the automatic discharge provision, for simplicity.

(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.~~

~~(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—~~

Commented [A4]: The non-redlined language is existing text. We are not raising the burden on the application front.

(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 ~~420~~180 calendar days before the school closed. The Secretary may extend the ~~420~~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, or 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~~

~~(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 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.

Commented [A5]: We have collapsed paragraphs (1) and (2) of (c) to reduce complexity in the language, because we propose to apply the 180-day window regardless of whether the borrower took out the loans before or after July 1, 2020.

We are conducting data analysis to understand the difference between 180 and 270 days but are not yet ready to share that.

(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.~~

(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.~~

Commented [A6]: We are trying to set up a standard 90 days before going back into repayment across multiple programs.

(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 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 (f)(4) 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;~~

Commented [A7]: We have collapsed paragraphs (f) and (g) into just (f) to reduce complexity in the language, because we propose to apply the 180-day window regardless of whether the borrower took out the loans before or after July 1, 2020. Additionally, (f)(5) ensures that borrowers who do not receive an automatic discharge and do not submit a completed a closed school discharge application are provided with another application upon the resumption of payments.

(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 accepted and completed -an approved teach out program.

(hi) 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;

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

(7) 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;~~

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

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

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

Commented [A8]: The Department historically required borrowers to apply for a closed school discharge in order to receive an attestation that they did not transfer their credits, because the statute states that the borrower is only eligible if they are unable to complete their program.

In 2016, largely due to improvements in administrative data, the Department determined it was able to limit the number of borrowers who would be required to submit an application, and would automatically discharge loans for any borrower who did not subsequently re-enroll in an institution. The Department is now proposing to further expand that universe for automatic discharges by capturing all borrowers who did not re-enroll in a comparable program automatically.

Due to recent changes in data reporting requirements, such information on program of study is available beginning only in 2014. Additionally, new reporting requirements in 2019 mean that ED can automatically discharge loans for borrowers who re-enrolled, even in a comparable program, as long as they did not complete a teach-out at their original institution.

The Department is conducting data analysis to look at how outcomes vary for borrowers who re-enrolled and those who did not. We do not yet have that ready for sharing prior to issuing regulatory text.

Commented [A9]: This refers to HCM2. We do not think HCM1 is appropriate as an exceptional circumstance because institutions can be placed on that status for a wide range of reasons that may not have any relation to closure.