

# Discharges for False Certification of Student Eligibility

The false certification discharge provisions in the Higher Education Act (20 USC 1087(c)) are intended to provide relief for harmed students, and discourage illegal, abusive school practices by providing for the discharge of loans when a college falsely certifies that the student is eligible to receive federal student aid. The Secretary of Education can recover the loan amounts from institutions in violation, as well as from their affiliates.

There are three categories of false certification through which an individual might be eligible for a discharge of their Direct Loans or FFEL Program loans:

- 1. Ability to benefit:** The school falsely certifies an individual's eligibility to receive the loan based on their ability to benefit from the schools training, and the individual doesn't meet the ability-to-benefit student eligibility requirements in effect at the time the school determined their eligibility.
- 2. Disqualifying status:** The school certifies an individual's eligibility to receive the loan, but at the time of the certification, the individual has a status (e.g., physical or mental condition, age, justice system involvement, or other circumstance) that disqualifies them from meeting the legal requirements for employment in their state of residence, in the occupation for which the program of study was intended.
- 3. Unauthorized signature or unauthorized payment:** There are several instances when this may occur. First, when a school signs an individual's name on the loan application or promissory note without the individual's authorization. Next, when the school endorses an individual's loan check or signs their authorization for electronic funds transfer without the individual's knowledge. Or, unauthorized use can occur when the loan money isn't given to the student or applied to charges the individual owes to the school.

Borrowers who receive false certification discharges are no longer required to repay the loan(s) or any associated fees or charges; they will be reimbursed for all amounts they paid on their loan(s). Updating and revising the false certification determination regulations will work to ensure that they are not unnecessarily limiting the scope of the law and denying much needed relief for borrowers harmed by false certifications of their eligibility for aid.

Some institutions have engaged in a variety of illegal and abusive acts--from enrolling students in career education programs that lack the programmatic accreditation necessary for employment in designated occupations, to enrolling students who do not speak English in programs taught only in English. Regulations need to be revised to provide more explicit relief, under a wider range of circumstances, so that borrowers are eligible for relief in any case in which a school falsely certifies students' eligibility to borrow under federal loan programs.

Existing regulations focus on falsification of the student-specific eligibility requirements, but this approach neglects the more systemic problem of school falsification rooted in institutional or programmatic ineligibility to participate in the federal student loan program. The Department should consider adopting regulations providing for discharges based on school falsification of

eligibility to borrow related to a finding of programmatic or institutional ineligibility to participate in the Title IV or Direct Loan programs.

Additional technical corrections would strengthen the false certification process. [We specifically recommend:](#)

❖ **Requiring Group Discharges Where Schools are Found to Engage in a Pattern or Practice of False Certification**

- Only a small fraction of the borrowers whose loans were falsely certified ever find out about this violation or their right to discharge, and schools that engage in false certification have often done so as a pattern or regular practice. The Department has existing authority to provide group discharges, including without application, for false certification, and has used a group-based approach in the past.<sup>1</sup>
- The Department should establish a robust group discharge process to ensure that more borrowers receive the relief they are entitled to, and that relief is not limited to those who obtain legal counsel.

❖ **Rescind the 2019 Amendments**

- In 2019, the Department amended the false certification regulations in ways that made it harder for borrowers to obtain relief. The regulations now limit relief for students whose schools falsely certified that the student met requirements for employment in the program field and make borrowers ineligible for discharge if they signed an attestation that they had a high school diploma.<sup>2</sup> The Department should rescind these new barriers to relief.

❖ **Ending the Presumption Against False Certification Discharge**

- Borrowers have no access to discovery in the administrative discharge process, and rarely have access to attorneys who might be able to track down potentially corroborating evidence.
- Borrowers who submit a sworn application for a false certification discharge that attests they were ineligible for student aid, but were falsely certified as eligible, should be presumed eligible for discharge, absent evidence to the contrary.<sup>3</sup>

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<sup>1</sup> 34 C.F.R. § 685.215(c)(8)

<sup>2</sup> 34 C.F.R. § 685.215(e)(1)(ii).

<sup>3</sup> Comment submitted to U.S. Department of Education by the Legal Aid Foundation of Los Angeles (LAFLA) and the National Consumer Law Center (NCLC), on behalf of their low-income clients, in response to Docket ID: ED-2021-OPE-0077, July 1, 2021. [https://www.nclc.org/images/pdf/student\\_loans/LAFLA\\_HEA\\_comment.pdf](https://www.nclc.org/images/pdf/student_loans/LAFLA_HEA_comment.pdf).