

(i) Providing the Secretary and the public with information on Internet web links and a comprehensive listing of postsecondary education opportunities, programs, publications and other services available in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(ii) Promoting and publicizing information for students and traditionally underrepresented populations on college planning, career preparation, and paying for college in coordination with other entities that provide or distribute such information in the State, or States for which the guaranty agency serves as the designated guaranty agency;

(2) The activities required by this section may be funded from the guaranty agency's Operating Fund in accordance with § 682.423(c)(1)(vii) or from funds remaining in restricted accounts established pursuant to section 422(h)(4) of the HEA.

(3) The guaranty agency shall ensure that the information required by this subsection is available to the public by November 5, 2006 and is—

- (i) Free of charge; and
- (ii) Available in print.

(Approved by the Office of Management and Budget under control number 1845-0020)

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

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and discharge of loans due to death, total and permanent disability, attendance at a school that closes, false certification by a

school of a borrower's eligibility for a loan, and unpaid refunds by a school are set forth in this section.

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan, as of the date the borrower died or became totally and permanently disabled, attributable to any of that borrower's loans that would have been eligible for discharge.

(3) If a PLUS loan was obtained by two parents as co-makers, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan unless that borrower would qualify for discharge of the loan under these regulations.

(4) Except for a borrower's loan obligation discharged by the Secretary under the false certification discharge provision of paragraphs (e)(1)(ii) or (iii) of this section, a loan qualifies for payment under this section and as provided in paragraph (h)(1)(iv) of this section, only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(5) For purposes of this section—

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding conducted in connection with credit bureau reporting, tax refund offset, wage garnishment, or in any other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and

no determination has been made under paragraph (a)(5) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) *Death.* (1) If an individual borrower dies, or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(2) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation supporting the discharge request.

(3) After receiving reliable information indicating that the borrower (or student) has died, the lender must suspend any collection activity against the borrower and any endorser for up to 60 days and promptly request the documentation described in paragraph (b)(2) of this section. If additional time is required to obtain the documentation, the period of suspension of collection activity may be extended up to an additional 60 days. If the lender is not able to obtain an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. The lender is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's (or student's) death.

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

(c)(1) *Total and permanent disability.* A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process.* After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim, under the procedures in paragraph (c)(5) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's initial eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the

criteria for a total and permanent disability discharge, as defined in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(ii) Upon making an initial determination that the borrower is totally and permanently disabled as defined in § 682.200(b), the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years and that no payments are due on the loan. The notification to the borrower identifies the conditions of the conditional discharge specified in paragraph (c)(4)(i) of this section. The conditional discharge period begins on the date the physician certified on the application that the borrower is totally and permanently disabled, as defined in § 682.200(b).

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge in paragraph (c)(4)(i) of this section, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(4) *Eligibility requirements for total and permanent disability discharge.* (i) A borrower meets the eligibility criteria for a discharge of a loan based on total and permanent disability if, from the date the physician certifies the borrower's application, through the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) The borrower does not receive a new TEACH Grant or a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures that the full amount of any title IV loan disbursement on any loan received prior

to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered delinquent or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

(C) Must promptly notify the Secretary of any changes in address or phone number;

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(4)(i)(A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(iii) If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the physician completed and certified the borrower's loan discharge application are returned to the person who made the payments on the loan.

(iv) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (c)(3)(i) of this section through the end of the conditional discharge period.

(v) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is disabled. As part

of this review or at any time during the application process or during or at the end of the conditional discharge period, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the applicant.

(5) *Lender and guaranty agency responsibilities.* (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, as defined in § 682.200(b). Except as provided in paragraph (c)(5)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, as defined in § 682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(5)(i) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is

complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) To remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the borrower receives a final disability discharge, the borrower—

(1) Cannot have annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Services Block Grant;

(2) Cannot receive any new Title IV loans except for a FFEL or Direct Consolidation Loan that does not include any loans on which the borrower is seeking a discharge; and

(3) Must ensure that the full amount of any Title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency

any payments subsequently received from or on behalf of the borrower.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

(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 90 days prior to the date the school closed. This 90-day period may be extended if the Secretary determines that exceptional circumstances related to a school's closing would justify an extension.

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

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

(B) The term "borrower" includes all others 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.

(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 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 written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state—

(i) Whether the 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;

(ii) That the borrower (or the student for whom a parent received a PLUS loan)—

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

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or on an approved leave of absence in accordance with § 682.605(c), or the student withdrew from the school not more than 90 days before the school closed; and

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

(iii) That the borrower agrees to provide, upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower that demonstrates, to the satisfaction of the Secretary or the

Secretary's designee, that the student meets the qualifications in paragraph (d) of this section; and

(iv) That the borrower 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 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 90 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 90 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 90 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 90 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 90 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 90 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.

(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 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 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 90 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.

(G) Upon receipt of a closed school discharge claim filed by a lender, the agency shall review the borrower's request and supporting sworn statement 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 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 lender or 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 lender or guaranty agency may capitalize, in accord-

ance with § 682.202(b), any interest accrued and not paid during that period.

(I) 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.

(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 the written request and sworn statement described in paragraph (d)(3) of this section within 60 days after 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.

(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 the borrower's written request and sworn statement described in paragraph (d)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(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 credit bureaus 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.* A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the—

(i) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.213 under the William D. Ford Federal Direct Loan Program; or

(ii) The 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.

(e) *False certification by a school of a student's eligibility to borrow and unauthorized disbursements.*

(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. On or after July 1, 2006, the Secretary reimburses the holder of a loan, and discharges a borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's eligibility to receive the loan was falsely certified as a result of a crime of identity theft. For purposes of a false certification discharge, the term "borrower" includes all endorsers on a loan. A stu-

dent's or other individual's eligibility to borrow shall be considered to have been falsely certified by the school if the school—

(A) Certified the student's eligibility for a FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR part 668 and section 484(d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or

(B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.

(C) Certified the eligibility of an individual for an FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in § 682.402(e)(14).

(ii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(iii) If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower—

(A) The Secretary does not pay reinsurance, and does not reimburse the holder, for any amount disbursed on the loan; and

(B) Any amounts received by a holder as interest benefits and special allowance payments with respect to the loan must be refunded to the Secretary, as

provided in paragraphs (e)(8)(ii)(B)(4) and (e)(10)(ii)(D) of this section.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (e)(1)(i) of this section relieves the borrower of an existing or past obligation to repay the loan certified by the school, 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 (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) 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 (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse or inaccurate credit history assigned to the loan.

(v) Discharge under paragraph (e)(1)(ii) of this section qualifies the borrower for relief only with respect to the amount of the disbursement discharged.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (e)(14) of this section, to qualify for a discharge of a loan under paragraph (e) of this section, the borrower must submit to the holder of the loan a written request and a sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower must—

(i) State whether the student has made a claim with respect to the school's false certification 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;

(ii) In the case of a borrower requesting a discharge based on defective testing of the student's ability to benefit,

state that the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986 to attend a school; and

(B) Was admitted to that school on the basis of ability to benefit from its training and did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(13) of this section;

(iii) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note—

(A) State that the signature on either of those documents was not the signature of the borrower; and

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature;

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower shall—

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so;

(B) Provide five different specimens of his or her signature, two of which must be not earlier or later than one year before or after the date of the contested signature; and

(C) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student;

(v) In the case of an individual who is requesting a discharge of a loan because the individual's eligibility was falsely certified as a result of a crime of identity theft committed against the individual—

(A) Certify that the individual did not sign the promissory note, or that

any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual;

(C) Provide a copy of a local, State, or Federal court verdict or judgment that conclusively determines that the individual who is named as the borrower of the loan was the victim of a crime of identify theft by a perpetrator named in the verdict or judgment;

(D) If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime, provide—

(1) Authentic specimens of the signature of the individual, as provided in paragraph (e)(3)(iii)(B), or other means of identification of the individual, as applicable, corresponding to the means of identification falsely used to obtain the loan; and

(2) A statement of facts that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of the crime of identity theft committed against that individual.

(vi) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(vii) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(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 (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who re-

quests or receives a discharge under paragraph (e) 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 (e) 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 (e) 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—general.* (i) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the state in which the school is located shall promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under paragraph (e) of this section, the 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 inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(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.

(iv) Upon receipt of a discharge claim filed by a lender or a request submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall have up to 90 days to determine whether the discharge should be granted. The agency shall review the

borrower's request and supporting sworn statement 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.

(v) A borrower's request for discharge and sworn statement may not be denied solely on the basis of failing to meet any time limits set by the lender, the Secretary or the guaranty agency.

(7) *Guaranty agency responsibilities with respect to a claim filed by a lender based on the borrower's assertion that he or she did not sign the loan application or the promissory note that he or she was a victim of the crime of identity theft, or that the school failed to test, or improperly tested, the student's ability to benefit.*

(i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(7) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall, not later than 30 days after the agency makes that determination, pay the claim in accordance with § 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(7)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must—

(I) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(7)(iii)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge, and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(7)(iii)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vi) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(7)(iii)(B) of this section.

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(8) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must—

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(3) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount; and

(4) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any

rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with § 682.402(h) and—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(1) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(2) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iv)(B) of this section, the loan shall either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge,

and state the reasons for that conclusion. The agency shall advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(1) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(2) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iv)(B)(1) of this section, the agency shall return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(vii) The agency shall pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iv)(B) of this section.

(9) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based on the borrower's assertion that he or she did not sign the loan application or the promissory note, that he or she was a victim of the crime of identity theft, or that the school failed to test, or improperly tested, the student's ability to benefit.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(9) of this section.

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the

borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it shall, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower—

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(11) of this section.

(v) The agency shall resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.* (i) The agency shall evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in paragraph (e)(10) of this section.

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(10)(ii)(D)(2) of this section, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days—

(1) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(2) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(i)(C) of this section

that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(10)(ii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency shall take the actions required under paragraphs (e)(9)(iii) through (v) if the agency determines that the borrower does not qualify for a discharge.

(11) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.* (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(7)(iii)(B)(2),

(e)(8)(iv)(B)(2), (e)(9)(iii)(B), or (e)(10)(iv) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for his review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (e) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraphs (e)(8)(iv) through (vii) or (e)(9)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency shall, within 30 days after being so informed, take the actions required under paragraph (e)(7)(ii), (e)(8)(ii), (e)(8)(iii), (e)(9)(ii), (e)(10)(ii), or (e)(10)(iii) of this section, as applicable.

(12) *Lender Responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under paragraph (e) of this section, the lender 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, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 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.

(iii) The lender shall file a claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement

described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) The lender shall comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under paragraph (e) of this section.

(v) The lender shall review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender shall take the actions required under paragraphs (e)(8)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(ii). If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan, and may file a claim with the guaranty agency for reimbursement on that ground, but shall not report the loan to credit bureaus as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender shall be deemed to have agreed to the following—

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the

proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(8)(ii)(B) of this section.

(vi) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender shall notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. 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.

(13) *Requirements for certifying a borrower's eligibility for a loan.* (i) For periods of enrollment beginning between July 1, 1987 and June 30, 1991, a student who had a general education diploma or received one before the scheduled completion of the program of instruction is deemed to have the ability to benefit from the training offered by the school.

(ii) A student not described in paragraph (e)(13)(i) of this section is considered to have the ability to benefit from training offered by the school if the student—

(A) For periods of enrollment beginning prior to July 1, 1987, was determined to have the ability to benefit from the school's training in accordance with the requirements of 34 CFR 668.6, as in existence at the time the determination was made;

(B) For periods of enrollment beginning between July 1, 1987 and June 30, 1996, achieved a passing grade on a test—

(1) Approved by the Secretary, for periods of enrollment beginning on or after July 1, 1991, or by the accrediting agency for other periods; and

(2) Administered substantially in accordance with the requirements for use of the test;

(C) Successfully completed a program of developmental or remedial education provided by the school; or

(D) For periods of enrollment beginning on or after July 1, 1996 through June 30, 2000—

(1) Obtained, within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of 34 CFR part 668; or

(2) Enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of 34 CFR part 668.

(E) For periods of enrollment beginning on or after July 1, 2000—

(1) Met either of the conditions described in paragraph (e)(13)(ii)(D) of this section; or

(2) Was home schooled and met the requirements of 34 CFR 668.32(e)(4).

(iii) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if—

(A) The school certified the eligibility of the student for a FFEL Program loan; and

(B) At the time of certification, the student would not meet the requirements for employment (in the student's State of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary.

(iv) Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student has the ability to benefit from the training offered by the school if the student received a high school diploma or its recognized equivalent prior to enrollment at the school.

(14) *Identity theft.* (i) The unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris

image, or unique physical representation;

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

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

(15) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the 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.

(f) *Bankruptcy*—(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (h) through (k) of this section.

(2) *Suspension of collection activity.* (i) If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—

(A) Must suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against any co-maker or endorser if the borrower has filed for relief under Chapters 7 or 11 of the Bankruptcy Code.

(ii) If the lender is notified that a co-maker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the co-maker or endorser and—

(A) Must suspend collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief under Chapters 12 or 13 of the Bankruptcy Code; or

(B) May suspend any collection efforts against the borrower and any other parties to the note if the co-maker or endorser has filed for relief

under Chapters 7 or 11 of the Bankruptcy Code.

(3) *Determination of filing.* The lender must determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other proof of filing provided by the debtor's attorney or the bankruptcy court.

(4) *Proof of claim.* (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

(5) *Filing of bankruptcy claim with the guaranty agency.* (i) The lender shall file a bankruptcy claim on the loan with the guaranty agency in accordance with paragraph (g) of this section, if—

(A) The borrower has filed a petition for relief under chapters 12 or 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under chapters 7 or 11 of the Bankruptcy Code before October 8, 1998 and the loan has been in repayment for more than seven years (exclusive of any applicable suspension of the repayment period) from the due date of the first payment until the date of the filing of the petition for relief; or

(C) The borrower has begun an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) In cases not described in paragraph (f)(5)(i) of this section, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(g) *Claim procedures for a loan held by a lender—*(1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:

(i) The original or a true and exact copy of the promissory note.

(ii) The loan application, if a separate loan application was provided to the lender.

(iii) In the case of a death claim, an original or certified death certificate, or other documentation supporting the discharge request that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and an assignment to the guaranty agency of any proof of claim filed by the lender regarding the loan; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy and all documents supporting those facts.

(vi) In the case of a closed school claim, the documentation described in paragraph (d)(3) of this section, or any other documentation as the Secretary may require;

(vii) In the case of a false certification claim, the documentation described in paragraph (e)(3) of this section.

(2) *Filing deadlines.* A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:

(i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died, or the lender determines that the borrower is totally and permanently disabled.

(ii) In the case of a closed school claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (d)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(iii) In the case of a false certification claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (e)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(iv) A lender shall file a bankruptcy claim with the guaranty agency by the earlier of—

(A) 30 days after the date on which the lender receives notice of the first meeting of creditors or other information described in paragraph (f)(3) of this section; or

(B) 15 days after the lender is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship, or, if the lender secures an extension of time within which an answer may be filed, 25 days before the expiration of that extended period, whichever is later.

(h) *Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency—*(1) *General.* (i) The guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

(ii) In the case of a bankruptcy claim, the guaranty agency shall, upon receipt of the claim from the lender, immediately take those actions required under paragraph (i) of this section to oppose the discharge of the loan by the bankruptcy court.

(iii) In the case of a closed school claim or a false certification claim based on the determination that the borrower did not sign the loan application, the promissory note, or the authorization for the electronic transfer of loan funds, or that the school failed to test, or improperly tested, the student's ability to benefit, the guaranty agency shall document its determination that the borrower is eligible for discharge under paragraphs (d) or (e) of this section and pay the borrower or the holder the amount determined under paragraph (h)(2) of this section.

(iv) In reviewing a claim under this section, the issue of confirmation of subsequent loans under an MPN will not be reviewed and a claim will not be denied based on the absence of any evidence relating to confirmation in a particular loan file. However, if a court rules that a loan is unenforceable solely because of the lack of evidence of the confirmation process or processes, insurance benefits must be repaid.

(2)(i) The amount of loss payable—

(A) On a death or disability claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest up to the date the lender should have filed the claim.

(B) On a bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (h)(3) of this section.

(ii) The amount of loss payable to a lender on a closed school claim or on a false certification claim is equal to the sum of the remaining principal balance

and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest determined in accordance with paragraph (h)(3) of this section.

(iii) In the case of a closed school or false certification claim filed by a lender on an outstanding loan owed by the borrower, on the same date that the agency pays a claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(iv) In the case of a claim filed by a lender based on a request received from a borrower whose loan had been repaid in full by, or on behalf of the borrower to the lender, on the same date that the agency notifies the lender that the borrower is eligible for a closed school or false certification discharge, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(v) In the case of a loan that has been included in a Consolidation Loan, the agency shall pay to the holder of the borrower's Consolidation Loan, an amount equal to—

(A) The amount paid on the loan by or on behalf of the borrower at the time the loan was paid through consolidation;

(B) The amount paid by the consolidating lender to the holder of the loan when it was repaid through consolidation; minus

(C) Any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source if those refunds or payments were—

(1) Received by the borrower or received by the holder and applied to the borrower's loan balance before the date

the loan was repaid through consolidation; or

(2) Received by the borrower or received by the Consolidation Loan holder on or after the date the consolidating lender made a payment to the former holder to discharge the borrower's obligation to that former holder.

(3) *Payment of interest.* If the guaranty covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the receipt date by the lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.

(i) *Guaranty agency participation in bankruptcy proceedings—(1) Undue hardship claims.* (i) In response to a petition filed prior to October 8, 1998 with regard to any bankruptcy proceeding by the borrower for discharge under 11 U.S.C. 523(a)(8) on the grounds of undue hardship, the guaranty agency must, on the basis of reasonably available information, determine whether the first payment on the loan was due more than 7 years (exclusive of any applicable suspension of the repayment period) before the filing of that petition and, if so, process the claim.

(ii) In all other cases, the guaranty agency must determine whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(iii) If the guaranty agency determines that repayment would not constitute an undue hardship, the guaranty agency must then determine

whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs. If the guaranty agency has determined that the expected costs of opposing the discharge petition will exceed one-third of the total amount of the loan, it may, but is not required to, engage in the activities described in paragraph (i)(1)(iv) of this section.

(iv) The guaranty agency must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. Unless discharge would be more effectively opposed by not taking the following actions, the agency must—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(v) In opposing a petition for a determination of dischargeability on the grounds of undue hardship, a guaranty agency may agree to discharge of a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13.* The guaranty agency shall take the following actions when a petition for relief in bankruptcy under Chapters 11, 12, or 13 is filed:

(i) The agency is not required to respond to a proposed plan that—

(A) Provides for repayment of the full outstanding balance of the loan;

(B) Makes no provision with regard to the loan or to general unsecured claims.

(ii) In any other case, the agency shall determine, based on a review of its own records and documents filed by the debtor in the bankruptcy proceeding—

(A) What part of the loan obligation will be discharged under the plan as proposed;

(B) Whether the plan itself or the classification of the loan under the plan meets the requirements of 11

U.S.C. 1129, 1225, or 1325, as applicable; and

(C) Whether grounds exist under 11 U.S.C. 1112, 1208, or 1307, as applicable, to move for conversion or dismissal of the case.

(iii) If the agency determines that grounds exist to challenge the proposed plan, the agency shall, as appropriate, object to the plan or move to dismiss the case, if—

(A) The costs of litigation of these actions are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan; and

(B) With respect to an objection under 11 U.S.C. 1325, the additional amount that may be recovered under the plan if an objection is successful can reasonably be expected to equal or exceed the cost of litigating the objection.

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan or seeks but does not demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge or move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

(j) *Mandatory purchase by a lender of a loan subject to a bankruptcy claim.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender, unless the guaranty agency sells the loan to another lender, promptly after the earliest of the following events:

(i) The entry of an order denying or revoking discharge or dismissing a proceeding under any chapter.

(ii) A ruling in a proceeding under chapter 7 or 11 that the loan is not dischargeable under 11 U.S.C. 523(a)(8) or other applicable law.

(iii) The entry of an order granting discharge under chapter 12 or 13, or confirming a plan of arrangement under chapter 11, unless the court determined that the loan is dischargeable

under 11 U.S.C. 523(a)(8) on grounds of undue hardship.

(2) The lender may capitalize all outstanding interest accrued on a loan purchased under paragraph (j) of this section to cover any periods of delinquency prior to the bankruptcy action through the date the lender purchases the loan and receives the supporting loan documentation from the guaranty agency.

(k) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.* (1)(i) The Secretary reimburses the guaranty agency for its losses on bankruptcy claims paid to lenders after—

(A) A determination by the court that the loan is dischargeable under 11 U.S.C. 523(a)(8) with respect to a proceeding initiated under chapter 7 or chapter 11; or

(B) With respect to any other loan, after the agency pays the claim to the lender.

(ii) The guaranty agency shall refund to the Secretary the full amount of reimbursement received from the Secretary on a loan that a lender repurchases under this section.

(2) The Secretary pays a death, disability, bankruptcy, closed school, or false certification claim in an amount determined under §682.402(k)(5) on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures in paragraphs (b), (c), or (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the "lender" and "guaranty

agency" in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower (or the student for whom a parent received a PLUS loan) was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school;

(iii) In the case of a Consolidation loan, the borrower (or one of the co-makers) has died, is determined to be totally and permanently disabled under §682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in §682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under §682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under §682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy,

or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

(3) [Reserved]

(4) Within 30 days of receiving reimbursement for a closed school or false certification claim, the guaranty agency shall pay—

(i) The borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder, guaranty agency, or the borrower from a tuition recovery fund, performance bond, or other third-party source; or

(ii) The amount determined under paragraph (h)(2)(iv) of this section to the holder of the borrower's Consolidation Loan.

(5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during—

(i) For death or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, or filed a petition for relief in bankruptcy until the Secretary authorizes payment;

(ii) For disability claims, the shorter of 60 days or the period from the date the guaranty agency makes a preliminary determination that the borrower became totally and permanently disabled until the Secretary authorizes payment; or

(iii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

(1) *Unpaid refund discharge*—(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary reimburses the guarantor of a loan and discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL Program loan (disbursed, in

whole or in part on or after January 1, 1986) equal to the refund that should have been made by the school under applicable Federal law and regulations, including this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* In the case of a school that is open, the guarantor discharges a former or current borrower's (and any endorser's) obligation to repay that portion of an FFEL loan (disbursed, in whole or in part, on or after January 1, 1986) equal to the amount of the refund that should have been made by the school under applicable Federal law and regulations, including this section, if—

(i) The borrower (or the student on whose behalf a parent borrowed) is not attending the school that owes the refund; and

(ii) The guarantor receives documentation regarding the refund and the borrower and guarantor have been unable to resolve the unpaid refund within 120 days from the date the guarantor receives a complete application in accordance with paragraph (1)(4) of this section. Any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the amount of the unpaid refund amount are also discharged.

(3) *Relief to borrower (and any endorser) following discharge.* (i) If a borrower receives a discharge of a portion of a loan under this section, the borrower is reimbursed for any amounts paid in excess of the remaining balance of the loan (including accrued interest, late charges, collection costs, origination fees, and insurance premiums) owed by the borrower at the time of discharge.

(ii) The holder of the loan reports the discharge of a portion of a loan under this section to all credit reporting agencies to which the holder of the loan previously reported the status of the loan.

(4) *Borrower qualification for discharge.* To receive a discharge of a portion of a loan under this section, a borrower must submit a written application to

the holder or guaranty agency except as provided in paragraph (1)(5)(iv) of this section. The application requests the information required to calculate the amount of the discharge and requires the borrower to sign a statement swearing to the accuracy of the information in the application. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement, the borrower 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 attend, withdrew, or was terminated from the school within a timeframe that entitled the borrower to a refund; and

(C) Did not receive the benefit of a refund to which the borrower was entitled either from the school or from a third party, such as a holder of a performance bond or a tuition recovery program.

(ii) State whether the borrower has any other application for discharge pending for this loan; and

(iii) State that the borrower—

(A) Agrees to provide upon request by the Secretary or the Secretary's designee other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for an unpaid refund discharge under this section; and

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

(5) *Unpaid refund discharge procedures.*

(i) Except for the requirements of paragraph (1)(5)(iv) of this section related to an open school, if the holder or guaranty agency learns that a school did not pay a refund of loan proceeds owed under applicable law and regulations, the holder or the guaranty agency sends 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.

(ii) If the borrower returns the application, specified in paragraph (1)(4) of this section, the holder or the guaranty agency must review the application to determine whether the application appears to be complete. In the case of a loan held by a lender, once the lender determines that the application appears complete, it must provide the application and all pertinent information to the guaranty agency including, if available, the borrower's last date of attendance. If the borrower returns the application within 60 days, the lender must extend the period during which efforts to collect on the affected loan are suspended to the date the lender receives either a denial of the request or the unpaid refund amount from the guaranty agency. At the conclusion of the period during which the collection activity was suspended, the lender may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iii) If the borrower fails to return the application within 60 days, the holder of the loan resumes collection efforts and grants forbearance of principal and interest for the period during which the collection activity was suspended. The holder may capitalize any interest accrued and not paid during that period in accordance with § 682.202(b).

(iv) The guaranty agency may, with the approval of the Secretary, discharge a portion of a loan under this section without an application if the guaranty agency determines, based on information in the guaranty agency's possession, that the borrower qualifies for a discharge.

(v) If the holder of the loan or the guaranty agency determines that the information contained in its files conflicts with the information provided by the borrower, the guaranty agency must use the most reliable information available to it to determine eligibility for and the appropriate payment of the refund amount.

(vi) If the holder of the loan is the guaranty agency and the agency determines that the borrower qualifies for a discharge of an unpaid refund, the

guaranty agency must suspend any efforts to collect on the affected loan and, within 30 days of its determination, discharge the appropriate amount and inform the borrower of its determination. Absent documentation of the exact amount of refund due the borrower, the guaranty agency must calculate the amount of the unpaid refund using the unpaid refund calculation defined in paragraph (o) of this section.

(vii) If the guaranty agency determines that a borrower does not qualify for an unpaid refund discharge, (or, if the holder is the lender and is informed by the guarantor that the borrower does not qualify for a discharge)—

(A) Within 30 days of the guarantor's determination, the agency must notify the borrower in writing of the reason for the determination and of the borrower's right to request a review of the agency's determination. The guaranty agency must make a determination within 30 days of the borrower's submission of additional documentation supporting the borrower's eligibility that was not considered in any prior determination. During the review period, collection activities must be suspended; and

(B) The holder must resume collection if the determination remains unchanged and grant forbearance of principal and interest for any period during which collection activity was suspended under this section. The holder may capitalize any interest accrued and not paid during these periods in accordance with § 682.202(b).

(viii) If the guaranty agency determines that a current or former borrower at an open school may be eligible for a discharge under this section, the guaranty agency must notify the lender and the school of the unpaid refund allegation. The notice to the school must include all pertinent facts available to the guaranty agency regarding the alleged unpaid refund. The school must, no later than 60 days after receiving the notice, provide the guaranty agency with documentation demonstrating, to the satisfaction of the guarantor, that the alleged unpaid refund was either paid or not required to be paid.

(ix) In the case of a school that does not make a refund or provide sufficient

documentation demonstrating the refund was either paid or was not required, within 60 days of its receipt of the allegation notice from the guaranty agency, relief is provided to the borrower (and any endorser) if the guaranty agency determines the relief is appropriate. The agency must forward documentation of the school's failure to pay the unpaid refund to the Secretary.

(m) *Unpaid refund discharge procedures for a loan held by a lender.* In the case of an unpaid refund discharge request, the lender must provide the guaranty agency with documentation related to the borrower's qualification for discharge as specified in paragraph (l)(4) of this section.

(n) *Payment of an unpaid refund discharge request by a guaranty agency—(1) General.* The guaranty agency must review an unpaid refund discharge request promptly and must pay the lender the amount of loss as defined in paragraphs (1)(1) and (1)(2) of this section, related to the unpaid refund not later than 45 days after a properly filed request is made.

(2) *Determination of the unpaid refund discharge amount to the lender.* The amount of loss payable to a lender on an unpaid refund includes that portion of an FFEL Program loan equal to the amount of the refund required under applicable Federal law and regulations, including this section, and including any accrued interest and other charges (late charges, collection costs, origination fees, and insurance premiums) associated with the unpaid refund.

(o)(1) *Determination of amount eligible for discharge.* The guaranty agency determines the amount eligible for discharge based on information showing the refund amount or by applying the appropriate refund formula to information that the borrower provides or that is otherwise available to the guaranty agency. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (o)(1) of this section is not available, the guaranty agency uses the following formulas to determine the amount eligible for discharge:

(i) In the case of a student who fails to attend or whose withdrawal or termination date is before October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the lesser of the institutional charges unearned or the loan amount. The guaranty agency determines the amount of the institutional charges unearned by—

(A) Calculating the ratio of the amount of time in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the institutional charges assessed the student for the loan period.

(ii) In the case of a student who fails to attend or whose withdrawal or termination date is on or after October 7, 2000 and who completes less than 60 percent of the loan period, the guaranty agency discharges the loan amount unearned. The guaranty agency determines the loan amount unearned by—

(A) Calculating the ratio of the amount of time remaining in the loan period after the student's last day of attendance to the actual length of the loan period; and

(B) Multiplying the resulting factor by the total amount of title IV grants and loans received by the student, or if unknown, the loan amount.

(iii) In the case of a student who completes 60 percent or more of the loan period, the guaranty agency does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(p) *Requests for reimbursement from the Secretary on loans held by guaranty agencies.* The Secretary reimburses the guaranty agency for its losses on unpaid refund request payments to lenders or borrowers in an amount that is equal to the amount specified in paragraph (n)(2) of this section.

(q) *Payments received after the guaranty agency's payment of an unpaid refund request.* (1) The holder must promptly return to the sender any payment on a fully discharged loan, received after the guaranty agency pays an unpaid refund request unless the sender is required to pay (as in the case

of a tuition recovery fund) in which case, the payment amount must be forwarded to the Secretary. At the same time that the holder returns the payment, it must notify the borrower that there is no obligation to repay a loan fully discharged.

(2) If the holder has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (q)(1) of this section, and the borrower (or representative) continues to send payments to the holder, the holder must remit all of those payments to the Secretary.

(3) If the loan has not been fully discharged, payments must be applied to the remaining debt.

(r) *Payments received after the Secretary's payment of a death, disability, closed school, false certification, or bankruptcy claim* (1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been discharged in bankruptcy on which the Secretary previously paid a bankruptcy claim, the guaranty agency must return 100 percent of these payments to the sender. The guaranty agency must promptly return, to the sender, any payment on a cancelled or discharged loan made by the sender and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it must notify the borrower that there is no obligation to repay a loan discharged on the basis of death, bankruptcy, false certification, or closing of the school.

(2) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the guaranty agency must forward those payments to the Secretary for crediting to the borrower's account. At the same time that the agency forwards the payments, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a

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total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(3) When the Secretary makes a final determination to discharge the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(4) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third party with respect to a loan on which the Secretary previously paid a closed school or false certification claim.

(5) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraphs (r)(1) or (r)(2) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency must remit all of those payments to the Secretary.

(s) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(A) with respect to loans guaranteed under the FFEL Program, an applicable suspension of the repayment period—

(1) Includes any period during which the lender does not require the borrower to make a payment on the loan.

(2) Begins on the date on which the borrower qualifies for the requested deferment as provided in § 682.210(a)(5) or the lender grants the requested forbearance;

(3) Closes on the later of the date on which—

(i) The condition for which the requested deferment or forbearance was received ends; or

(ii) The lender receives notice of the end of the condition for which the requested deferment or forbearance was received, if the condition ended earlier than represented by the borrower at the time of the request and the borrower did not notify timely the lender of the date on which the condition actually ended;

(4) Includes the period between the end of the borrower's grace period and the first payment due date established by the lender in the case of a borrower who entered repayment without the knowledge of the lender;

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1070g, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087)

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§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guaranty agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guaranty agency; or

(2) 1 or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guaranty agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guaranty agency—

(A) Agrees to establish at least 1 office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an institution of higher education and that it