

## § 685.215

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.

(5) *Cooperation with Secretary.* The borrower shall state that the borrower (or student)—

(i) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(ii) Agrees to cooperate with the Secretary in enforcement actions as described in § 685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in § 685.213(e).

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary mails the borrower a disclosure application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the written request and sworn statement described in paragraph (c) of this section within 60 days of the Secretary's mailing the disclosure application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the written request and sworn statement described in paragraph (c) of the section, the Secretary determines whether to grant a request for discharge under this section by reviewing the request and sworn statement in light of information available from the Secretary's records and from other sources, including guaranty agencies, State authorities, and cognizant accrediting associations.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under para-

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graph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(Approved by the Office of Management and Budget under control number 1845-0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

[59 FR 61690, Dec. 1, 1994, as amended at 59 FR 66134, Dec. 22, 1994; 61 FR 29900, June 12, 1996; 64 FR 58972, Nov. 1, 1999]

### § 685.215 Unpaid refund discharge.

(a)(1) *Unpaid refunds in closed school situations.* In the case of a school that has closed, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(2) *Unpaid refunds in open school situations.* (1) In the case of a school that is open, the Secretary discharges a former or current borrower's (and any endorser's) obligation to repay that portion of a Direct Loan equal to the refund that should have been made by the school under applicable law and regulations, including this section, if—

(A) The borrower (or the student on whose behalf a parent borrowed) has ceased to attend the school that owes the refund;

(B) The borrower has been unable to resolve the unpaid refund with the school; and

(C) The Secretary is unable to resolve the unpaid refund with the school within 120 days from the date the borrower submits a complete application in accordance with paragraph (c)(1) of this section regarding the unpaid refund. Any accrued interest and other charges associated with the unpaid refund are also discharged.

(ii) For the purpose of paragraph (a)(2)(i)(C) of this section, within 60 days of the date notified by the Secretary, the school must submit to the

Secretary documentation demonstrating that the refund was made by the school or that the refund was not required to be made by the school.

(b) *Relief to borrower following discharge.* (1) If the 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 and other charges) owed by the borrower at the time of discharge.

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

(c) *Borrower qualification for discharge.* (1) Except as provided in paragraph (c)(2) of this section, to receive a discharge of a portion of a loan under this section, a borrower must submit a written application to the Secretary. 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 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 the holder of a performance bond or a tuition recovery program;

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

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

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the bor-

rower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions as described in §685.213(d) and to transfer any right to recovery against a third party to the Secretary as described in §685.213(e).

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

(d) *Determination of amount eligible for discharge.* (1) The Secretary 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 Secretary. For purposes of this section, all unpaid refunds are considered to be attributed to loan proceeds.

(2) If the information in paragraph (d)(1) of this section is not available, the Secretary 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 Secretary discharges the lesser of the institutional charges unearned or the loan amount. The Secretary determines the amount of the institutional charges 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 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 Secretary discharges the loan amount unearned. The Secretary 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

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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 Secretary does not discharge any amount because a student who completes 60 percent or more of the loan period is not entitled to a refund.

(e) *Discharge procedures.* (1) Except as provided in paragraph (c)(2) of this section, if the Secretary learns that a school did not make a refund of loan proceeds owed under applicable law and regulations, the Secretary sends the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If a borrower who is sent a discharge application fails to submit the application within 60 days of the Secretary's sending the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If a borrower qualifies for a discharge, the Secretary notifies the borrower in writing. The Secretary resumes collection and grants forbearance of principal and interest on the portion of the loan not discharged for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(4) If a borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of the reasons for the determination. The Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may cap-

italize any interest accrued and not paid during that period.

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(Authority: 20 U.S.C. 1087a *et seq.*)

[64 FR 58969, Nov. 1, 1999]

**§ 685.216 Consolidation.**

(a) *Direct Consolidation Loans.* A borrower may consolidate one or more education loans made under certain Federal programs into one or more Direct Consolidation Loans. Loans consolidated into a Direct Consolidation Loan are discharged when the Direct Consolidation Loan is originated.

(b) *Loans eligible for consolidation.* The following loans may be consolidated into a Direct Consolidation Loan:

- (1) Federal Stafford Loans.
- (2) Guaranteed Student Loans.
- (3) Federal Insured Student Loans (FISL).
- (4) Direct Subsidized Loans.
- (5) Direct Subsidized Consolidation Loans.
- (6) Federal Perkins Loans.
- (7) National Direct Student Loans (NDSL).
- (8) National Defense Student Loans (NDSL).
- (9) Federal PLUS Loans.
- (10) Parent Loans for Undergraduate Students (PLUS).
- (11) Direct PLUS Loans.
- (12) Direct PLUS Consolidation Loans.
- (13) Federal Unsubsidized Stafford Loans.
- (14) Federal Supplemental Loans for Students (SLS).
- (15) Federal Consolidation Loans.
- (16) Direct Unsubsidized Loans.
- (17) Direct Unsubsidized Consolidation Loans.
- (18) Auxiliary Loans to Assist Students (ALAS).
- (19) Health Professions Student Loans (HPSL) and Loans for Disadvantaged Students (LDS) made under subpart II of part A of title VII of the Public Health Service Act.
- (20) Health Education Assistance Loans (HEAL).
- (21) Nursing loans made under subpart II of part B of title VIII of the Public Health Service Act.