

Discharging the Loan

If a doctor of medicine or osteopathy, legally authorized to practice in a state, certifies that the borrower is totally and permanently disabled, the borrower's obligation to repay the loan is canceled. For these purposes, a borrower is considered totally and permanently disabled if he or she is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. A borrower is not considered totally and permanently disabled on the basis of a condition that existed before he or she applied for the loan (the date the borrower signed the application and promissory note), unless that condition has substantially deteriorated to the point of total and permanent disability since the borrower applied for the loan. In this situation, the borrower should ensure that the physician clearly notes that the condition became total and permanent after the date on which the borrower applied for the loan.

For a Consolidation loan, a borrower must be certified totally and permanently disabled according to FFELP discharge criteria for *all* underlying loans—including any non-FFELP loans. In other words, all of the underlying loans would be eligible for discharge due to total and permanent disability had these loans not been consolidated. A borrower is considered totally and permanently disabled based on a condition that existed at the time the borrower applied for an underlying loan only if the borrower's condition substantially deteriorated to the point that the borrower was rendered totally and permanently disabled after the loan was made. If requested, a borrower seeking to discharge a Consolidation loan obligation must provide the lender with the disbursement dates of the underlying loan(s), if that information is not available in the lender's servicing records.
[§682.402(c)]

If a loan is made to two borrowers as comakers, the loan is dischargeable as a total and permanent disability claim only if both borrowers become disabled or if one borrower becomes disabled and the other has his or her obligation to repay the loan discharged on another basis (such as death or bankruptcy). If only one comaker has his or her obligation discharged, the other comaker is obligated for repayment of the remaining loan balance.

If there have been servicing errors on the loan such that the loan has lost its guarantee, and those violations were not cured before the date the lender determined that the borrower was totally and permanently disabled, the lender must discharge the loan—even though the balance will not be reimbursed by the guarantor.
[§682, Appendix D]

Timely Filing Deadline for Total and Permanent Disability Claims

A lender must file a disability claim within 60 days of receiving the physician's certification. If a disability claim is not filed by the 60th day, the guarantor will still purchase the claim—unless prior servicing violations were not cured appropriately. However, the claim will be subject to an interest penalty, and the lender will be required to repay all interest benefits and special allowance payments for amounts received or otherwise payable after the expiration of the 60-day deadline.

[§682.402(g)(2)(i)]

CCI 8.2.D.

Bankruptcy Claims

A lender may be advised of a borrower's bankruptcy by the borrower, but must make its determination to file a claim based on the receipt of the Notice of the First Meeting of Creditors (the Notice) or other proof of filing from the borrower's attorney or the bankruptcy court (either directly from the court or from another source).

[§682.402(f)(3)]

If a borrower defaults on a loan and then files a bankruptcy petition, the lender must file a default claim on the loan no later than the 360th day of delinquency. The lender must clearly note its receipt of bankruptcy documentation in the claim file. Before filing the default claim, the lender—as holder of the loan—is responsible for performing any and all bankruptcy activity required by the court and responding to all bankruptcy correspondence.

If a borrower has been approved for a loan and, before the loan is fully disbursed or the final disbursement has been delivered to the borrower by the school, the lender is notified that the borrower has filed a bankruptcy action, the lender should cancel all remaining funds that have not been disbursed and request that the school immediately return any disbursements sent to the school but not yet delivered to the borrower.

If the bankruptcy action requires the lender to file a claim with the guarantor, the lender must file a bankruptcy claim within the applicable timely filing deadlines defined in this section. The lender must file the claim for the balance outstanding on the date that the lender receives the bankruptcy notice, less any funds returned by the school prior to the date on which the claim is filed. If, after claim filing, the lender receives funds returned from the school, the lender must credit those amounts to the borrower's loan and notify the guarantor of the revised claim amount.

Some guarantors have different requirements regarding the treatment of disbursements when a lender is notified of a borrower's filing for bankruptcy. These requirements are noted in appendix C.

Suspending Collection

If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts against the borrower that are outside the bankruptcy proceeding. If the borrower filed a Chapter 12 or 13 bankruptcy, the lender must also suspend any collection efforts against any comaker or endorser. Suspension of collection efforts against any comaker or endorser is optional if the borrower filed a Chapter 7 or 11 bankruptcy.

If the lender is notified that a comaker or endorser has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts against the comaker or endorser that are outside the bankruptcy proceeding. If the comaker or endorser filed a Chapter 12 or 13 bankruptcy, the lender must also suspend any collection efforts against the borrower and any other parties to the note. Suspension of collection activities against the borrower and any other parties to the note is optional if the comaker or endorser filed a Chapter 7 or 11 bankruptcy.

Filing a Proof of Claim

A lender must file a proof of claim with the bankruptcy court no later than 30 days after it receives the Notice—unless the Notice specifically states that a proof of claim is not required. If required, the proof of claim must be filed, even if a default claim has already been filed on the loan and the lender has not yet received payment from the guarantor. If a proof of claim is required, the lender must immediately forward a copy of the bankruptcy notification, proof of claim, and an original assignment of the proof of claim to the guarantor.

[§682.402(f)(4)]

- ▲ Some guarantors may file a proof of claim on the lender's behalf. Lenders may contact individual guarantors for more information. See section 1.5 for contact information.

If a proof of claim is not required by the court, the lender should ensure that it is on the bankruptcy court's mailing list. This may be accomplished through either a telephone call or letter to the bankruptcy court. Doing so will ensure that the current holder receives all notices regarding the borrower's bankruptcy filing.

All notices received regarding the borrower's bankruptcy filing should be forwarded to the guarantor, within 30 days of receipt, if a claim is pending or has been paid.

Loans Eligible for Bankruptcy Claim Payment

A lender must file a bankruptcy claim if any one of the following conditions exist:

- A borrower files a Chapter 12 or 13 bankruptcy.
- A Chapter 7 or 11 bankruptcy is converted to a Chapter 12 or 13 bankruptcy.
- A borrower files a petition for undue hardship (or adversary complaint) under a Chapter 7 or 11 bankruptcy.

[§682.402(f)(5)(i)(A) and (C); 971 PL 105-244]

In all cases, the guarantor will review the loan's servicing history to ensure that servicing requirements have been fulfilled before the date the lender was notified of the borrower's petition for bankruptcy.

If a loan is made to two borrowers as comakers, the loan is dischargeable as a bankruptcy claim only if both borrowers have filed bankruptcy actions under which federal educational loans are dischargeable or if one borrower has done so and the other borrower has his or her obligation to repay the loan discharged on another basis (such as death or total and permanent disability). If only one comaker has his or her obligation to repay the loan discharged, the other comaker becomes obligated for the repayment of the remaining loan balance. However, the lender must follow bankruptcy, statutory, and case law as it pertains to comaker discharge.

When preparing a claim, the lender must file a proof of claim with the bankruptcy court for all “asset” cases (as instructed on the Notice) and include a copy of the proof of claim and an original assignment of the proof of claim in the claim file.

Loans Not Eligible for Bankruptcy Claim Payment

If a loan is not eligible for claim payment, the lender must hold the loan and cease collection activities until the bankruptcy action concludes. When the action concludes and the lender is notified that the loan was deemed nondischargeable, that the bankruptcy case was dismissed, or that a discharge was reversed, the lender must treat the loan as though it were in forbearance. Any accrued interest should be capitalized from the date of the bankruptcy petition to the date the lender received notification that the bankruptcy action was concluded. The lender also may include in the administrative forbearance any period before the date of the bankruptcy petition for which the borrower was delinquent.

[§682.402(f)(5)(ii)]

The lender must return the account to repayment and schedule the next payment due date to occur within 45 days after receiving the notification that the bankruptcy action has concluded, if the account should be in repayment at that time. If the loan was in a deferred, in-school, or grace status at the time the bankruptcy notification was received, the lender should ascertain the correct status for the loan at the conclusion of the bankruptcy action and return the loan to that status.

Timely Filing Deadlines for Bankruptcy Claims

In the absence of information to the contrary (such as a date stamp on the Notice), a guarantor will assume that any notification provided by a bankruptcy court was received by the lender on the 5th day following the court issuance date marked on the Notice. A lender is strongly encouraged to date-stamp all bankruptcy notifications immediately upon receipt, to provide clear evidence of the receipt date. Other acceptable proof of receipt includes a letter from the lender certifying a specific receipt date or documentation in the borrower’s file or the servicing history of the loan.

[§682.402(f)]

A bankruptcy claim and proof of claim, if applicable, must be filed with all required documents within 30 days of the lender’s receipt of the Notice of the First Meeting of Creditors or other confirmation issued by the

bankruptcy court or within 30 days of the date the guarantor provides the lender with bankruptcy information and instructs the lender to file a claim, whichever is earlier. For more information on documentation to be filed with a bankruptcy claim, see subsection ^{CCI} 8.3.B.

[§682.402(g)(2)(iv)(A)]

If a borrower files a petition for undue hardship (or adversary complaint), the lender must file a claim within 15 days of receiving the petition or within 15 days of the date the guarantor provides the lender with the bankruptcy information and instructs the lender to file a claim, whichever is earlier. If the lender receives an extension of time from the bankruptcy court for filing a response to the undue hardship petition (adversary complaint), the claim must be filed no less than 25 days before the expiration of that extended period or within 15 days of the date the guarantor provides the lender with the bankruptcy information and instructs the lender to file a claim, whichever is later.

[§682.402(g)(2)(iv)(B)]

Failure to submit a dischargeable bankruptcy claim by the end of the claim filing deadline will result in permanent cancellation of the guarantee on the loan—unless the lender can demonstrate that the bankruptcy action has been concluded and that the loan was not discharged or that the bankruptcy action in which the loan was originally discharged has been reversed. If this is the case, the lender need not cure the violation but must return the loan to the appropriate status and resume servicing activities. If the loan was 270 days or more delinquent at the time the borrower filed bankruptcy, the lender may treat the loan as a default. The lender may file a default claim within 90 days of being notified of the bankruptcy action’s conclusion or reversal or by the 360th day of delinquency, whichever is earlier. The claim, if purchased, will be subject to an interest penalty, and the lender will be required to repay all interest benefits and special allowance payments for amounts received or otherwise payable from the date on which the loan should have been filed as a bankruptcy claim through the date on which the lender received notice that the loan was not dischargeable or that the discharge had been reversed.

If a lender incurred due diligence violations or timely filing violations that resulted in cancellation of the guarantee, and those violations remained uncured as of the date it received notification of the bankruptcy filing, the lender may not file a bankruptcy claim. These violations cannot be cured—unless the debt is not discharged at the conclusion of the bankruptcy action, in which case the lender may attempt to cure the violations after the loan is returned to a repayment status.

CCI 8.2.E.**Dismissal or Reversal of Bankruptcy Action**

After a guarantor purchases a bankruptcy claim, it may diligently contest the discharge of the loan with the bankruptcy court. Generally, a loan will be considered dischargeable only if the borrower has filed a successful petition for undue hardship (or adversary complaint). The guarantor must, under federal regulations, require a lender to repurchase a loan that was filed as a bankruptcy claim if the bankruptcy is subsequently dismissed by the court or if the loan is determined to be nondischargeable. The loan may not necessarily be sold to the lender that filed the bankruptcy claim.

[§682.402(j)]

A lender will be notified if it is required to repurchase a loan. If a lender is required to repurchase a loan for the preceding reason, the loan should be treated as though it were in an administrative forbearance from the date the borrower filed bankruptcy to the date the repurchase occurred and the lender received the supporting documentation from the guarantor. The lender may include in the administrative forbearance any period before the date of the bankruptcy petition for which the borrower was delinquent. For more information on claim repurchase, see section CCI 8.7.

[§682.402(j)]

CCI 8.2.F.**Ineligible Borrower Claims**

A loan for which the borrower is ineligible due to the borrower's or student's error (see section 7.12) is treated as a default if the borrower fails to repay the full amount due within 30 days after the final demand letter is mailed.

A lender must file an ineligible borrower claim for the entire outstanding loan amount on or after the 30th day, and no later than the 120th day, after the date it mailed the final demand letter.

Because a loan for which a borrower is determined to be ineligible loses eligibility for interest benefits, the amount of interest refunded to the Department becomes borrower accrued interest and may be capitalized. For claim payment purposes, this interest is treated like any other delinquent interest.

[§682.412]

For information on claim documentation, see subsection

CCI 8.3.B.

If an ineligible borrower claim is filed after 120 days from the date a timely final demand letter is mailed, the guarantor will purchase the claim with an interest penalty.

CCI 8.2.G.**Closed School Loan Discharge**

The Higher Education Act provides relief for borrowers who are unable to complete their programs of study due to the closing of a school. Borrowers who meet the criteria outlined in this subsection may be eligible to have their loans discharged.

In most cases, to qualify for a closed school loan discharge, a borrower must complete, certify, and submit to his or her lender or guarantor the closed school loan discharge form approved by the Department (see appendix F). This form, hereafter referred to as the "request," includes the following statements:

- The borrower (or student for whom a parent obtained a PLUS loan) received, on or after January 1, 1986, the proceeds of a disbursement of a FFELP loan to attend a school that later closed.
- The borrower (or student) did not complete the program of study at the school for which the loan was obtained because the school closed while the student was enrolled or on an approved leave of absence, or the student withdrew within 90 days of the school's closing.
- The borrower (or student) did not complete—and is not currently in the process of completing—the same or a similar program of study through a teach-out at another school, by transferring academic credits or hours earned at the closed school to another school, or by benefitting by any other means from the training provided by the closed school.
- The borrower (or student) agrees to provide, upon request, other reasonably available documentation that demonstrates the borrower's eligibility for discharge.
- The borrower (or student) agrees to cooperate with the Department or its designee in any enforcement action or attempt to recover discharged loan amounts, and to transfer and relinquish to the Department any right to a refund on a discharged loan.

5. Curing Instrument

A curing instrument (or a legible copy of a curing instrument) must be included as part of the claim file documentation if not previously provided to the guarantor. Examples of curing instruments include a new repayment agreement signed by the borrower, a copy of a payment check, or, in the case of an intensive collection activities (ICA)/location cure procedure, acceptable evidence that the borrower has been located as required in subsection ^{CCI}8.8.L.

Guarantors may require lenders to provide additional information or documentation, for example if the borrower disputes the loan amount or a school disputes its cohort default rate.

Death or Disability Claims

For a death claim, the lender must submit—in addition to the preceding items 1 through 5—an original or certified copy of the death certificate (see subsection ^{CCI}8.2.B.). In the event of an exceptional circumstance and on a case-by-case basis, the lender must submit other reliable documentation approved by the guarantor's CEO.

For a total and permanent disability claim, the lender must submit—in addition to the preceding items 1 through 5—a completed Physician's Certification of Borrower's Total and Permanent Disability, a common Temporary or Permanent Total Disability Certification Request Form, or other forms approved by the Department (such as the common deferment form).

Bankruptcy Claims

For a bankruptcy claim, the lender must submit—in addition to the preceding items 1 through 5—notification of the bankruptcy filing, such as the Notice of the First Meeting of Creditors (the Notice) or other proof of filing directly received from the borrower's attorney, the bankruptcy court, or from another source; a copy of the Proof of Claim filed by the lender, if required; an original assignment of the Proof of Claim, if required; and all other pertinent documents sent to or received from the bankruptcy court.

Ineligible Borrower Claims

For an ineligible borrower claim, the lender is required to submit only items 1 through 3 of the preceding list. The lender must also provide the month, day, and year the final demand letter was mailed and reasonable documentation supporting the borrower's ineligibility for the loan, such as an affidavit or letter from the school or a statement from the lender clearly stating the facts and allegations.

Some guarantors have additional or alternative requirements regarding claim file documentation. These requirements are noted in appendix C.

Closed School Claims, False Certification Claims, and Unpaid Refund Discharges

Documentation requirements for closed school and false certification claims are outlined in subsections ^{CCI}8.2.G. and ^{CCI}8.2.H., respectively. Documentation requirements for unpaid refund discharges are outlined in subsection ^{CCI}8.2.I.

^{CCI} 8.3.C.

Missing Claim File Documentation

If a lender submits a claim file with any required documentation missing or incomplete, or if the guarantor determines that more information is needed to process the claim, the guarantor may attempt to obtain the necessary documentation or return the claim file to the lender with a request for the missing documentation.

To expedite the claim filing process and avoid the return of claim files to the lender, the guarantor may use a fax machine to request and receive missing information from lenders. The types of documentation that may be transmitted and received by fax include, but are not limited to, the application, promissory note, promissory note assignment, payment history information, deferment or forbearance documentation, and missing collection history. In the case of documentation where an original or true and accurate copy may be required (such as the promissory note), the lender may fax a copy of the document so that the guarantor can continue processing the claim. However, the lender must, within the time frame established by the guarantor, forward the original document—or a copy certified as true and accurate—to the guarantor to avoid a future claim return.

- ▲ Lenders may contact individual guarantors for information on faxing claim file documentation. See section 1.5 for contact information.

If a lender is unable to provide requested documentation, the loan may be subject to interest penalties or due diligence violations. If a lender is unable to provide accurate payment information, as required on the Claim Form, the guarantee on the loan may be canceled. However, the lender may attempt to have the loan's guarantee reinstated in many cases by following the applicable cure procedures (see subsection CCI 8.8.I.).

In some cases, an indemnification agreement will be accepted if a lender is unable to provide required documentation for claim filing.

- ▲ Lenders may contact individual guarantors for information on the use of indemnification agreements to substitute for documents required in the claim file. See section 1.5 for contact information.

CCI 8.3.D. Claim File Receipt

Guarantors recommend that a lender retain copies of its postal or courier receipts for claims submitted and a list of all claims included in each package. Due to the difficulty in determining the lender's filing date, in absence of evidence to the contrary, a guarantor will monitor timely claim filing activities by permitting a 5-day mail time allowance, based on the date the guarantor receives the claim file.

To obtain confirmation that its claim submission has been received, the lender should include two copies of a transmittal letter with each submission. The guarantor may retain one copy of the transmittal letter and will sign and date the other copy and return it to the lender. This will provide the lender with a quick and simple method of ensuring that all claims are received by the guarantor. At a minimum, the transmittal letter should include the borrower name, Social Security number, and claim amount for each claim file, with a space for the guarantor to sign and date the letter.

CCI 8.3.E. Credit Bureau Reporting

As required under subsection 3.5.C., the lender must report to at least one national credit bureau the date a borrower's loan is discharged due to the disability, bankruptcy, or the death of the borrower or dependent student, as applicable. For closed school and false certification claims, the current loan holder must, within 30 days of the date the lender is notified that a loan is discharged, notify all credit reporting agencies to which any adverse credit has been reported that the loan obligation has been discharged and that the adverse credit information must be corrected.

[§682.208(b)]

CCI 8.3.F. Receipt of Payments after Claim Payment

A lender must forward to the guarantor any borrower payment received on a loan for which a claim has been purchased by the guarantor. The payment must be forwarded within 30 days of the lender's receipt of the payment.

CCI 8.4 Claim Returns

A guarantor will return (send back) a claim to the lender under certain circumstances. The guarantor will notify the lender of the reason for the return. Most claim returns occur for one or more of the following reasons:

- The lender incurs a violation(s) that results in a loss of guarantee on the loan.
- The claim package contains inadequate documentation.
- The borrower is found not to be in a default status.
- The lender is unable to provide sufficient documentation to justify the claim.
- The borrower is actually eligible for a loan when a lender incorrectly determines that he or she is ineligible, or if ineligible, is not ineligible *solely* due to his or her own error (e.g., when a lender receives retroactive information that a student never enrolled although the student actually attended classes).