

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)]

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 bankruptcy notification. For more information on documentation to be filed with a bankruptcy claim, see subsection 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 proper notification. 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.

[§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.

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 8.7.

[§682.402(j)]

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 8.3.B.

In the case of a timely claim filing violation, the lender may attempt to cure the violation by performing the cure procedure for ineligible loans (see subsection 8.8.J.). However, the claimed loan will be subject to an interest penalty. The lender must repay special allowance payments received after the date of the first disbursement.

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.

8.3.B. Claim File Documentation

A lender must include the documentation listed in this subsection with each claim file it submits to a guarantor. If the borrower's file contains more than one of any document, all of the originals—or copies, if the originals are not available—should be included and grouped together. The lender also should group all claim files together by claim type (default, bankruptcy, etc.).

Default, Death, Disability, and Bankruptcy Claims

Each claim file must contain the following documentation, as applicable. The documents should be arranged in the following order and according to the specified guidelines:

Some guarantors have alternative requirements regarding the order of claim file documentation. These requirements are noted in appendix C.

1. *Guarantor's Claim Form*

If approved in advance by the guarantor, the lender may submit its own form in lieu of the guarantor's claim form.

2. *Application and Promissory Note*

The lender must submit the application, if a separate loan application was provided to the lender. The lender also must submit the original promissory note, or a copy of the promissory note certified by the lender as true and accurate, with any signed promissory note addenda. If the guarantor retains the application or promissory note on the lender's behalf, the lender is expected to submit only the imaged copy of the document that it receives from the guarantor or a facsimile of the document.

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 in situations involving certified true and exact copies of promissory notes. See section 1.5 for contact information.

3. *Assignment of Promissory Note*

The claim file must contain the holder's original assignment of the promissory note to the guarantor. This assignment may be stamped, typed, or written directly on the back of the note—or, if the guarantor permits, may be in the form of a letterhead assignment. For letterhead assignments (assignment on a sheet of the agency's letterhead, rather than on the note itself), the lender must ensure that the borrower name and Social Security number, loan amount, disbursement date(s), and loan type is provided for each note being assigned.

If the ownership of the loan was previously assigned to the current holder from another holder, the holder must document all prior assignments, as applicable, and the lender's assignment of the note to the guarantor. Each prior assignment may be stamped, typed, or written directly on the back of the note, or may be in the form of a letterhead assignment or otherwise through an agreement with the guarantor.

4. *Evidence of Disbursement*

The lender must provide the date and amount of each disbursement of the loan. Generally, the lender is not required to provide proof of disbursement—such as the original endorsed disbursement check, copies of both sides of the original endorsed check, or other proof acceptable in a court of law—as part of the claim file. However, the lender is required to provide proof of disbursement if such proof is requested by the guarantor or the borrower disputes the receipt of the funds.

5. *Out-of-School Date Information*

Documentation should reflect the source and receipt date of the last date of attendance used by the lender to convert the loan to repayment. This out-of-school date information is used by the guarantor to verify the timely conversion of the loan to repayment (see section 7.3). If the out-of-school date information provided cannot be substantiated by the supporting documentation or the guarantor's records and results in an inaccurate conversion to repayment or incorrect deferment eligibility, the guarantor may return the claim to the lender, assess penalties for due diligence violations, or cancel the guarantee.

6. *Repayment Disclosure*

Documentation of the borrower's repayment disclosure must include the repayment start date, first payment due date, the amount and number of the borrower's scheduled payments, the loan balance including capitalized interest, and the date on which the disclosure was sent. If such information is provided as part of the servicing history of the loan, a copy of the actual repayment disclosure form need not be included in the claim file.

7. *Deferment/Forbearance Documentation*

The servicing history notation of each borrower request for deferment or forbearance, along with any deferment documentation, must indicate the beginning date, ending date, and type of deferment or forbearance.

Some guarantors may require actual paper copies of deferment documentation. These requirements are noted in appendix C.

8. *Collection History*

The lender must submit a complete and legible record of the collection history of the loan. Such documentation must clearly reflect due diligence, servicing, and collection activities performed, sufficient to support guarantor review. The lender should ensure that the guarantor has on file an up-to-date legend of the lender's collection and servicing codes.

9. *Complete Payment History*

A history of payments made by or on behalf of the borrower must be provided to document the following:

- All borrower payments, prepayments, and school refunds received—including the dates, amounts, and application (the distribution to principal, interest, and other charges) of each payment or return.
- All interest capitalization that occurred.

If the loan was assigned from a previous holder, the new holder must be able to provide a complete payment history or other summary of payments made by or on behalf of the borrower detailing the prior holder's receipt of payments, prepayments, and school refunds.

The lender should ensure that the guarantor has on file an up-to-date legend of the lender's payment codes.

If all or a portion of the payment history is missing, the lender must follow guidance in subsections 8.8.C. and 8.8.I.

Death or Disability Claims

For a death claim, the lender must submit—in addition to the preceding items 1 through 9—an original or certified copy of the death certificate (see subsection 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 9—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 9—notification of the bankruptcy filing, such as the Notice of the First Meeting of Creditors or other proof of filing received from the borrower's attorney or the bankruptcy court; a copy of the Proof of Claim filed by the lender, if required; an original assignment of the Proof of Claim; 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 9 of the preceding list—plus 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.

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

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