

Common Manual Policy Proposal Batch 216 Transmittal

March 21, 2019

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1320	Loan Rehabilitation and Interest Capitalization	<p>10.10 Capitalizing Accrued Interest 13.7 Rehabilitation of Defaulted FFELP Loans Conforms common policy with a regulatory change which prohibits capitalizing outstanding accrued interest when a lender purchases a rehabilitated loan and establishes the borrower’s repayment schedule.</p>	Federal	For rehabilitated loans purchased after October 16, 2018.
1323	Closed School Discharge	<p>13.8.B Closed School Revised policy states that upon resuming collection on a loan for which a borrower has failed to submit a completed Loan Discharge Application: School Closure form within 60 days of being notified of that option, the lender must provide the borrower another Loan Discharge Application: School Closure form and an explanation of the requirements and procedures for obtaining a discharge. Revised policy also explains why and how lenders may be informed of a borrower’s automatic discharge related to schools that close on or after November 1, 2013. For such schools, a borrower’s obligation to repay the loan can be discharged without the borrower completing a Loan Discharge Application: School Closure form if the Department or guaranty agency determines that the borrower did not re-enroll in any title IV-eligible institution within a period of three years after the school closed.</p>	Federal	<p>For the requirement to send a second application, initial closed school discharge applications sent to borrowers on or after December 14, 2018.</p> <p>For the automatic discharge process, notifications received on or after December 14, 2018, from guarantors or the Department.</p>

Batch 216 (Approved)

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: March 21, 2019

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	No changes	03/21/2019

SUBJECT: Loan Rehabilitation and Interest Capitalization

AFFECTED SECTIONS: 10.10 Capitalizing Accrued Interest
13.7 Rehabilitation of Defaulted FFELP Loans

POLICY INFORMATION: 1320/Batch 216 (originally distributed in Batch 209)

EFFECTIVE DATE/TRIGGER EVENT: For rehabilitated loans purchased after October 16, 2018.

BASIS:

Final Rule published in November 1, 2016 *Federal Register* (81 FR 75926); §682.202(b)(1), and §682.405(b)(4)(ii); California Association of Private Postsecondary Schools v. DeVos, ___F.Supp.3d at___(2018 WL 5017749, at *15).

CURRENT POLICY:

Lenders may consider the purchase of a rehabilitated loan as entry into or resumption of repayment and thus capitalize outstanding accrued interest when purchasing a rehabilitated loan from a guarantor and establishing the borrower's repayment schedule.

REVISED POLICY:

A lender must not consider the purchase of a rehabilitated loan as entry into or resumption of repayment and therefore may not capitalize outstanding accrued interest when purchasing a rehabilitated loan from a guarantor and establishing the borrower's repayment schedule.

REASON FOR CHANGE:

This change conforms common policy to regulations published in the November 1, 2016 *Federal Register* (81 FR 75926), which prohibit capitalizing outstanding accrued interest when a lender purchases a rehabilitated loan and establishes the borrower's repayment schedule. This regulatory package was delayed by the Department numerous times, most recently on February 14, 2018 (83 FR 6458). On October 16, 2018, a federal judge denied a request for a preliminary injunction against implementation of the regulatory package, essentially making the regulations effective immediately.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 10.10, page 23, column 2, paragraph 2 as follows:

Capitalizing Accrued Interest

Capitalization of interest on all FFELP loans is permitted under the terms of the promissory note and federal regulations. A lender capitalizes interest by adding accrued interest to the loan's principal balance.

A lender is not permitted to capitalize outstanding accrued interest at the time it purchases a rehabilitated loan from a guarantor and establishes the borrower's repayment schedule. The lender may not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purposes of interest capitalization.
[§682.202(b)(1); §682.405(b)(4)(ii)]

Revise Subsection 13.7, page 16, column 2, paragraph 3 as follows:

The purchasing lender will receive outstanding principal, outstanding accrued interest, and interest-paid-through date information ~~payment history information (such as payment amounts and dates when the loan was in a default status)~~ with the loan documentation to assist in the accurate conversion to repayment. A rehabilitated loan retains the same interest rate and deferment provisions that were applicable when the loan was first disbursed and repayment terms and all other benefits applicable to other FFELP loans made

under the same loan type. The lender is not permitted to capitalize outstanding accrued interest at the time it purchases a rehabilitated loan and establishes the borrower's repayment schedule. The lender may not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purposes of interest capitalization.
[§682.202(b)(1); §682.405(b)(4)]

PROPOSED LANGUAGE - COMMON BULLETIN:

The *Common Manual* is being revised to incorporate regulatory changes outlined in the November 1, 2016 *Federal Register* that prohibit the lender's capitalization of outstanding accrued interest when purchasing a rehabilitated loan from a guarantor and establishing the borrower's repayment schedule. The lender may not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purpose of interest capitalization. The change is effective for rehabilitated loans purchased after October 16, 2018. The Manual is also revised to clarify that the guarantor will provide outstanding principal, outstanding accrued interest, and interest-paid-through date information to assist the lender with an accurate conversion to repayment.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower: Borrowers with outstanding accrued interest on rehabilitated loans will not have that interest capitalized into the principal balance of the loan.

School: None.

Lender/Servicer: Lenders and servicers must not capitalize outstanding accrued interest upon purchasing a rehabilitated loan from a guarantor.

Guarantor: Guarantors should review their systems to ensure they are able to pass along outstanding principal, outstanding accrued interest, and interest-paid-through date information to the purchasing lender.

U.S. Department of Education: None.

To be completed by the Policy Development and Maintenance Contractor (PDMC)

POLICY CHANGE PROPOSED BY:

Policy Development and Maintenance Contractor

DATE SUBMITTED TO CM POLICY DEVELOPMENT AND MAINTENANCE CONTRACTOR:

November 17, 2017

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

March 14, 2019

PROPOSAL DISTRIBUTED TO:

CM Governing Board Chair
CM Guarantor Designees
Interested Industry Groups and Others

Comments Received from:

NASFAA, NCHER, PHEAA, PPSVC, TG, UHEAA

Responses to Comments (from Batch 209)

Several commenters supported this proposal as written. Several commenters asked that the proposal be deferred until an industry working committee determined whether the regulatory change affected the common Claim Form, and guarantors determined whether system changes are needed to accommodate the change. The PDMC agreed to defer the proposal as requested. The industry committee workgroup concluded that the common Claim Form was not impacted and needed only a non-substantive wording change. This resulted in the

original proposal being recirculated as written. The following are comments and responses from the proposal being recirculated. We thank all commenters for their thorough review.

COMMENT: Multiple commenters suggested deleting language in 13.7 that describes certain payment history information that purchasing lenders will receive from guarantors. The commenters noted that guarantors typically do not pass along this information. Multiple commenters suggested including language in 13.7 that would specify that purchasing lenders will receive outstanding principal, outstanding accrued interest, and interest paid-through date information.

Response:

After examining the suggestion further and discussing with guarantors, the PDMC agrees.

Change:

The purchasing lender will receive outstanding principal, outstanding accrued interest, and interest-paid-through date information ~~payment history information (such as payment amounts and dates when the loan was in a default status)~~ with the loan documentation to assist in the accurate conversion to repayment.

COMMENT: Multiple commenters suggested altering the Guarantor Comments section to read: Guarantor must provide outstanding principal and outstanding accrued interest with the loan documentation to assist in accurate conversion to repayment.

Response:

The PDMC accepts the premise of this comment, but modified it slightly. Further, we believe the commenters meant the edit to be made to the Guarantor Implications statement, not the Guarantor Comments section.

Change:

Guarantor Implication statement has been revised to read: Guarantors should review their system to ensure they are passing along outstanding principal, outstanding accrued interest, and interest-paid-through date information to the purchasing lender.

COMMENT: One commenter suggested that revisions to 10.10 and 13.7 should include citation of §682.410(b)(4).

Response:

The PDMC disagrees. That regulation speaks to what a guarantor may or may not do. The *Common Manual* focuses on lenders and servicers and does not address guarantor policies and procedures.

Change:

None.

Note: The Policy Development and Maintenance Coordinator recalled and then reissued this proposal due to the legal uncertainty surrounding the regulatory change that drives it. Below are comments in response to the reissued proposal in Batch 216.

Comments Received from:

MDHE, NCHER, PPSVC, UHEAA, VSAC

All commenters supported this proposal as written. We appreciate the commenters' thorough review.

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: March 21, 2019

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	No changes	03/21/2019

SUBJECT: Closed School Discharge

AFFECTED SECTIONS: 13.8.B Closed School

POLICY INFORMATION: 1323/Batch 216 (originally distributed in Batch 211)

EFFECTIVE DATE/TRIGGER EVENT: For the requirement to send a second application, initial closed school discharge applications sent to borrowers on or after December 14, 2018.

For the automatic discharge process, notifications received on or after December 14, 2018, from guarantors or the Department.

BASIS: Final Rule published in November 1, 2016 *Federal Register* (81 FR 75926); §682.402(d)(6)(ii)(I), §682.402(d)(6)(ii)(K)(3), §682.402(d)(7)(ii) and (iii), and §682.402(d)(8)(ii); Electronic Announcement December 13, 2018.

CURRENT POLICY: Current policy states that in most cases borrowers must submit a Loan Discharge Application: School Closure form to have their loans discharged under the closed school discharge regulations, and that a lender will resume collection on a loan for which a borrower has failed to submit a completed application form within 60 days of the borrower being notified of their potential eligibility for closed school discharge.

REVISED POLICY: Revised policy states that upon resuming collection on a loan for which a borrower has failed to submit a completed Loan Discharge Application: School Closure form within 60 days of being notified of that option, the lender must provide the borrower another Loan Discharge Application: School Closure form and an explanation of the requirements and procedures for obtaining a discharge. Revised policy also explains why and how lenders may be informed of a borrower's automatic discharge related to schools that close on or after November 1, 2013. For such schools, a borrower's obligation to repay the loan can be discharged without the borrower completing a Loan Discharge Application: School Closure form if the Department or guaranty agency determines that the borrower did not re-enroll in any title IV-eligible institution within a period of three years after the school closed.

REASON FOR CHANGE: These changes are to conform with regulations published in the November 1, 2016 *Federal Register* (81 FR 75926), which made multiple changes to the closed school discharge regulations. This regulatory package was delayed by the Department numerous times, most recently on February 14, 2018 (83 FR 6458). On October 16, 2018, a federal judge denied a request for a preliminary injunction against implementation of the regulatory package, essentially making the regulations effective immediately. However, the Department did not contact borrowers, lenders, or guarantors about the new automatic closed school discharge process or the other closed school changes until mid-December 2018, and did not publicly explain the changes until the December 13, 2018 Electronic Announcement.

Note: There is another regulatory change related to closed school discharge that is not being addressed in the Manual at this time. That change is related to a new requirement that the guarantor notify a borrower who has been denied discharge of the option to have the denial reviewed by the Department. As written, the regulations in §682.402(d)(6)(ii)(F) require the guarantor to notify borrowers with *defaulted* loans of the review option. There is no corresponding requirement for guarantors to provide such notification to borrowers with non-defaulted loans who have been denied discharge, nor is there a corresponding requirement for the lender to notify a borrower who has been denied discharge of the review option in §682.402(d)(7). More specifically,

§682.402(d)(7)(v) was not revised to expand the lender's notification requirement beyond telling the borrower of the reason for denial. As such, the PDMC does not feel the Manual should include a requirement for lenders that is not clearly delineated in regulation. The Electronic Announcement makes no distinction between defaulted and non-defaulted borrowers, so it does not address or resolve this issue.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 13.8.B, page 22, column 2, paragraph 3, as follows:

In some cases, a borrower may qualify for a closed school discharge without submitting a loan discharge application if the borrower received a closed school loan discharge on a loan under the Federal Perkins Loan Program or the Federal Direct Loan Program for the same program of study at the same school. Also, the borrower may not be required to submit a loan discharge application if the Department or the guarantor, with the Department's permission, determines that the borrower qualifies for a discharge based on information in the Department's or guarantor's possession. With respect to schools that closed on or after November 1, 2013, a borrower's obligation to repay a loan will be discharged without an application from the borrower if the Department or guaranty agency determines that the borrower did not subsequently re-enroll in any title IV-eligible school within a period of three years after the school closed.
[§682.402(d)(8)]

Revise Subsection 13.8.B, page 23, column 2, paragraph 4, as follows:

If the borrower continues to make payments during the forbearance period, the lender is not required to return those payments to the borrower until the guarantor determines the borrower's eligibility for the loan discharge. The lender must resume collection activity if the borrower fails to return a completed loan discharge application within 60 days after the date the application is sent to the borrower, or within 30 days from receiving notification that the loan is ineligible for closed school discharge. The lender may capitalize the interest accrued during the administrative forbearance period. Upon resuming collection activity, the lender must provide the borrower with another discharge application and an explanation of the requirements and procedures for obtaining a discharge.
[§682.402(d)(7)(ii); §685.214(f)(4)]

Revise Subsection 13.8.B, page 24, column 2, paragraph 2, as follows:

If a borrower fails to submit a completed loan discharge application within 60 days of being notified of that option, the lender must resume collection activity on the affected loan(s). Upon resuming collection activity, the lender must provide the borrower with another discharge application and an explanation of the requirements and procedures for obtaining a discharge. The lender is deemed to have exercised forbearance on the loans(s) beginning on the date on which the lender suspends collection activity. The lender may capitalize unpaid interest that accrues during the forbearance period.
[~~§682.402(d)(6)(ii)(H)~~; §682.402(d)(7)(ii); §685.214(f)(4)]

Revise Subsection 13.8.B, page 26, column 1, paragraph 2 as follows:

Claim Filing Requirements

A lender must file a closed school loan discharge claim within no later than 60 days of after receiving a completed loan discharge application from the borrower or, if the guarantor has obtained the application directly from the borrower, within 60 days of the date of the guarantor's notification to file a closed school loan discharge claim, or 60 days after receiving notification from the guarantor that the Department approved the borrower for discharge after the borrower requested the Department review their eligibility. Failure to meet this timely filing deadline may result in an interest penalty.
[§682.402(d)(7)(iii)]

Revise Subsection 13.8.B, page 27, column 1, paragraph 1 as follows:

Processing an Approved Discharge

If the Department or guarantor determines that a loan is eligible for closed school loan discharge, the guarantor will refund to the borrower all payments made by or on behalf of the borrower, less any payments received from a third-party source—unless the guarantor also holds a defaulted loan for the borrower that is not eligible for the discharge. If the guarantor holds such a loan, the guarantor may apply the borrower's refund to the outstanding balance of the defaulted loan account. Any payment exceeding

the remaining balance of the defaulted loan account will be forwarded to the borrower. The guarantor will notify the borrower of the application of the refund to repay the defaulted loan(s). (For more information on how to manage an overpayment on a loan, see the subheading "Claim Payment.")

Revise Subsection 13.8.B, page 27, column 2, paragraph 3, as follows:

Denying the Discharge

If a guarantor determines that a loan is not eligible for discharge under closed school loan discharge provisions, it will return the claim to the lender with an explanation of why the borrower is not eligible. The lender must, within 30 days:

- Notify the borrower of the reasons for denial.
- Resume collection efforts. The lender may capitalize outstanding interest that accrued during the forbearance period.
- Provide the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

[§682.402(d)(7)(v); §682.402(d)(6)(ii)(I); §685.214(f)(6)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Closed School Discharge Changes

The Manual is being revised to incorporate new regulatory requirements for closed school discharge. A lender will be required to send another closed school discharge application at the time the lender resumes collection activity for a borrower who fails to submit an application within 60 days of being notified of the option for discharge or if the borrower has been denied discharge. The Manual is also revised to explain the possibility that the Department or guarantor may determine that a borrower is automatically eligible for a closed school discharge (i.e., no application needed). Such determinations can be made by either the Department or guarantor for borrowers who attended schools that closed on or after November 1, 2013, when the borrower fails to re-enroll in any title-IV eligible school within three years from the date the borrower's school closed.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower: If a borrower fails to submit a completed Loan Discharge: Closed School Application form within 60 days of being notified of that option, they will receive another application and an explanation of the requirements and procedures for obtaining a discharge. For borrowers that attended a school that closed on or after November 1, 2013, they may have their loans discharged without submitting an application if they do not re-enroll in any title IV-eligible institution within a period of three years after the school closed, as determined by the Department or guarantor.

School: None.

Lender/Service: If a borrower fails to submit a completed Loan Discharge: Closed School Application form within 60 days of being notified of that option, the lender/service must, when resuming collection, send the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge. Lenders may also be notified by a guarantor that a borrower is eligible for an automatic closed school discharge for schools that close on or after November 1, 2013.

Guarantor: A guarantor will automatically grant a closed school discharge if the borrower's school closed on or after November 1, 2013, and the borrower does not re-enroll in any title IV-eligible institution within a period of three years after the school closed. The Department has developed a process to inform guarantors of the borrowers and loans eligible for automatic discharge. The Department will execute a monthly query and securely transmit that information to FFEL Program guaranty agencies. This will include both defaulted and non-defaulted borrowers. It is then the guaranty agency's responsibility to alert the lender of the discharge.

U.S. Department of Education: The Department may grant a discharge without a borrower application if the borrower's school closed on or after November 1, 2013, and the borrower does not re-enroll in any title-IV

eligible institution within a period of three years after the school closed.

To be completed by the Policy Development and Maintenance Contractor (PDMC)

POLICY CHANGE PROPOSED BY:

Policy Development and Maintenance Contractor

DATE SUBMITTED TO CM POLICY DEVELOPMENT AND MAINTENANCE CONTRACTOR:

December 15, 2016

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

March 14, 2019

PROPOSAL DISTRIBUTED TO:

CM Governing Board Chair
CM Guarantor Designees
Interested Industry Groups and Others

Comments Received from:

NCHER, PHEAA, PPSVP, TG, UHEAA, VSAC

Responses to Comments (from Batch 211)

Almost all commenters supported this proposal as written. We appreciate the commenters' thorough review, particularly on this proposal, as interpreting the new regulations proved challenging.

COMMENT: One commenter suggested a small edit to 13.8.B to be more precise about when a lender resumes collection activity after a borrower has failed to return an application for discharge.

Response: The PDMC agrees.

Change:

Section 13.8.B, page 24, column 1, paragraph 1 has been changed to read as follows:

If the borrower continues to make payments during the forbearance period, the lender is not required to return those payments to the borrower until the guarantor determines the borrower's eligibility for the loan discharge. The lender must resume collection activity if the borrower fails to return a completed loan discharge application within 60 days ~~after~~^{of} the date the application is sent to the borrower, or within 30 days from receiving notification that the loan is ineligible for closed school discharge. The lender may capitalize the interest accrued during the administrative forbearance period. Upon resuming collection activity, the lender must provide the borrower with another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

COMMENT: The same commenter suggested modifying 13.8.B, page 26, column 1, paragraph 2, to specify that the 60 day time frame under the claim filing requirements can be triggered by a notification from the guarantor that the Department approved the borrower's appeal for discharge. The commenter also suggested a minor edit to be more precise about when a lender must file a claim.

Response:

The PDMC believes that the existing language covered this since there are multiple ways that a guarantor can be alerted to a borrower qualifying for a closed school discharge. However, we have no issue calling out this specific route to discharge if it adds clarity to the passage. The PDMC also agrees to make the small edit to the description of the timeframe in which claims must be made.

Change:

A lender must file a closed school loan discharge claim ~~within no later than~~^{within} 60 days ~~of~~^{after} receiving a completed loan discharge application from the borrower or, if the guarantor has obtained the application directly from the borrower, within 60 days of the date of the guarantor's notification to file a closed school loan discharge claim, or 60 days after receiving notification from the guarantor that the Department approved the borrower for discharge after the borrower requested the Department review their eligibility. Failure to meet this timely filing deadline may result in an interest penalty.

Note: The Policy Development and Maintenance Coordinator recalled and then reissued this proposal

due to the legal uncertainty surrounding the regulatory change that drives it. Below are comments in response to the reissued proposal in Batch 216.

Comments Received from:

MDHE, NCHER, PPSVC, UHEAA, VSAC

All commenters supported this proposal as written. We appreciate the commenters' thorough review.