

Common Manual Policy Proposal Batch 227 Transmittal

March 16, 2023

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1339	False Certification	<p>Revised policy incorporates the following regulatory changes:</p> <ul style="list-style-type: none"> • Removes ability to benefit certifications made by a school as qualifying a borrower for discharge. • Adds eligibility for discharge based on a school certifying a student who reported not having a high school diploma or its equivalent and did not satisfy the alternative to graduation from high school requirements outlined in the HEA and federal regulations. • Adds eligibility for discharge based on a school certifying a student who was not a high school graduate based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower. • Adds an additional 30 days to amend an incomplete discharge application. • Removes the requirement for a borrower applying for discharge based on a disqualifying condition to provide information about state legal requirements for employment and supporting documentation proving the borrower had the disqualifying status at the time the loan was certified or originated. • Removes the requirement that a borrower applying for discharge based on the school signing his or her name on the loan application or promissory note or signing the EFT or master check authorization without the borrower’s permission provide signature samples. • Removes the requirement that a borrower who applies for false certification discharge based on the crime of identity theft must provide a copy of a local, state, or federal court verdict naming a perpetrator. 	Federal	False certification discharge applications received on or after July 1, 2023
1340	Separating Joint Federal Consolidation Loans	Revised policy explains the Department’s policy for borrowers who want to separate their joint (spousal) Federal Consolidation loans into separate Direct Consolidation loans.	Federal	Borrowers pursuing joint Federal Consolidation Loan separation on or after October 11, 2022

Batch 227 (Approved)

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: March 9, 2023

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	No Changes	Mar 16, 2023

SUBJECT: False Certification

AFFECTED SECTIONS: 13.8.D False Certification by the School
13.8.E False Certification as a Result of the Crime of Identify Theft

POLICY INFORMATION: Y008/1339/Batch 227

EFFECTIVE DATE/TRIGGER EVENT: False certification discharge applications received on or after July 1, 2023

BASIS:
Final Rule (87 FR 65904) published November 1, 2022.

CURRENT POLICY:

Current policy states a borrower may qualify for false certification discharge because a school admitted them based on their ability to benefit from the training. Current policy does not include eligibility for false certification based on 1) a school certifying a student who reported not having a high school diploma or its equivalent and did not satisfy the alternative to graduation from high school requirements outlined in the Higher Education Act (HEA) and federal regulations, or 2) a school certifying a student who is not a high school graduate based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower.

Current policy does not provide a borrower an additional 30 days to amend an incomplete discharge application.

Current policy requires a borrower who applies for false certification discharge based on a disqualifying condition to provide information about the state legal requirements for employment that the student could not meet, and supporting documentation proving the borrower had the disqualifying status at the time the loan was certified or originated. Current policy requires a borrower who applies for false certification discharge because the school signed his or her name on the loan application or promissory note or signed the electronic funds transfer or master check authorization without the borrower’s permission to state that the signature on the loan application or promissory is not his or hers, and to provide five different signature samples. Current policy requires a borrower who applies for false certification discharge based on the crime of identity theft to provide a copy of a local, state, or federal court verdict naming a perpetrator. As part of the alternative to providing a court verdict, current policy states the borrower must provide signature samples.

Current policy combines some of the false certification types when explaining guarantor and lender actions for processing the discharges. Finally, current policy does not include regulatory citations where appropriate.

REVISED POLICY:

Revised policy removes a borrower being admitted by the school on their ability to benefit from the training as qualifying the borrower for false certification. Revised policy adds eligibility for false certification based on 1) a school certifying a student who reported not having a high school diploma or its equivalent and did

not satisfy the alternative to graduation from high school requirements outlined in the Higher Education Act (HEA) and federal regulations, or 2) a school certifying a student who is not a high school graduate based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower.

Revised policy allows a borrower an additional 30 days to amend an incomplete discharge application.

Revised policy also removes the requirement for a borrower applying for false certification based on a disqualifying condition to provide information about state legal requirements for employment and supporting documentation proving the borrower had the disqualifying status at the time the loan was certified or originated. Revised policy removes the requirement that a borrower applying for discharge based on the school signing his or her name on the loan application or promissory note or signing the EFT or master check authorization without the borrower's permission provide signature samples. Revised policy removes the requirement that a borrower who applies for false certification discharge based on the crime of identity theft must provide a copy of a local, state, or federal court verdict naming a perpetrator.

Revised policy delineates the guarantor and lender actions based on the type of false certification being processed. Finally, revised policy amends and adds regulatory citations where appropriate.

REASON FOR CHANGE:

Final Rule changes published in *Federal Register* 87 FR 65904.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 13.8.D, page 30, column 1, as follows:

A borrower who meets all of the requirements that pertain to a particular type of false certification loan discharge as outlined in this subsection is eligible to have his or her applicable loan(s) discharged. A borrower qualifies for a false certification loan discharge of the loan, in full or in part, if the borrower—or the student for whom a parent obtained a PLUS loan—received any part of the proceeds of a FFELP loan on or after January 1, 1986, to attend a school that did any one of the following:

- ~~Admitted the student on the basis of his or her ability to benefit from its training, even though the student did not meet the applicable requirements for admission on the basis of ability to benefit.~~
- Certified a loan for a student who reported not having a high school diploma or its equivalent and did not satisfy the alternative to graduation from high school requirements in 34 CFR 668.32(e) and HEA section 484(d), as applicable, that were in effect at the time the loan was certified.
[§682.402(e)(1)(ii)(A); §685.215(a)(1)(i)]
- Certified a loan for a student who is not a high school graduate based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower.
[§682.402(e)(1)(ii)(B); §685.215(a)(1)(ii)]
- Certified a loan for a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Department, would not meet State requirements for employment (in the student's State of residence when the loan was certified) in the occupation for which the training program supported by the loan was intended.
[§682.402(e)(1)(ii)(C); §685.215(a)(1)(iv)]
- ~~Signed the borrower's name on the application and/or promissory note without his or her authorization, unless the borrower intended to obtain the loan and the student for whom the loan was made benefited from the proceeds of the loan.~~

[§682.402(e)(1)(ii)(D); §685.215(a)(1)(iii)]

- Endorsed the borrower’s name on the loan check or signed the authorization for electronic funds transfer (EFT) or master check without the borrower’s authorization—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 to charges owed to the school for the portion of the educational program completed by the student.

[§682.402(e)(1)(iii)]

If the guarantor determines that a borrower is eligible for a loan discharge or a discharge of one or more disbursements of a loan, the discharge cancels the obligation of the borrower to repay the applicable outstanding principal, accrued interest, collection costs, and late fees. It also qualifies the borrower for reimbursement of any amounts paid voluntarily or through forced collection on the amount discharged. The lender or guarantor must ensure that a discharge is reported to nationwide consumer reporting agencies such that any adverse credit history associated with the amount discharged is removed. [HEA §437(c); §682.402(e)(2); §685.215(b)]

The guarantor or Department may initiate the discharge process without an application from the borrower if either determines that the borrower is eligible for discharge based on information in its possession. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in 34 CFR §668.34. If, however, the borrower initiates the process by requesting a discharge based on false certification, the borrower must complete, certify, and submit to the lender or guarantor the applicable loan discharge application. Through submission of this application, the borrower:

- Agrees to provide to the Department, as requested, other documentation reasonably available true and correct documentation that demonstrates, to the satisfaction of the Department (or designee), that the borrower’s eligibility meets the qualifications for discharge. [§682.402(e)(3)(vii); §685.215(c)(8)]
- 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. [§682.402(e)(3)(viii); §685.215(c)(8)]
- States 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, discloses the amount of any payment received by the borrower (or student) or credited to the loan obligation. [§682.402(e)(3)(i); §685.215(c)(7)]

Revise Subsection 13.8.D, page 31, column 1, as follows:

Suspending Collection Activity

If a guarantor or the Department notifies a lender, or the lender receives reliable information from another source (such as a telephone call or letter from the borrower) that a borrower may be eligible for a false certification loan discharge, the lender must immediately suspend all collection activity and must grant an administrative forbearance on any affected loan. If the notification indicates that the false certification loan discharge may be applicable to any underlying loan(s) of a Consolidation loan, the lender must suspend collection activity on the entire Consolidation loan.

[§682.402(e)(13)(i); §685.215(d)(1)]

The lender must grant the borrower a 60-day administrative forbearance beginning no earlier than the date the loan discharge application was sent to the borrower. The forbearance must be applied to all

loans that are potentially eligible for discharge. Forbearance is unnecessary for borrowers whose loans are in a grace, forbearance, or deferred status—unless the grace, forbearance, or deferred status expires before the end of the 60-day administrative forbearance period. In these cases, the forbearance must begin immediately upon the expiration of the grace, forbearance, or deferred status and end no earlier than 60 days after the date the loan discharge application was sent to the borrower.
[§682.211(f)(8); §685.215(d)(2)]

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 borrower’s eligibility for discharge is determined. The lender must resume collection activities if the borrower fails to return a completed loan discharge application within 60 days after the date the application is sent to the borrower. The lender must resume collection activities within 30 days from receiving notification that the loan or any part of the loan is ineligible for false certification loan discharge. The lender may capitalize the interest accrued during the administrative forbearance period.
[§682.402(e)(13)(ii); §685.215(d)(1)&(2)]

If the borrower submits an application for discharge that the lender determines is incomplete, the lender notifies the borrower of that determination and allows the borrower an additional 30 days to amend the application and provide supplemental information. If the borrower does not amend their application within 30 days of the lender’s notification that the application is incomplete, the application is closed as incomplete, and the lender resumes collection of the loan and grants forbearance for the suspension.
[§682.402(e)(13)(iii); §685.215(d)(3)]

Revise Subsection 13.8.D, page 31, column 2, paragraph 1, bullet 3, as follows:

- An explanation of the administrative forbearance applied to each of the borrower’s potentially eligible loans and the effect of the capitalization of interest accrued during the forbearance period.
[§682.402(e)(12)(13)(i); §685.215(b)(6)(iii)]

Revise Subsection 13.8.D, page 31, column 2, paragraph 3, as follows:

If the borrower initiates the discharge process by notifying the guarantor or lender of his or her potential eligibility for discharge, the borrower must complete a loan discharge application. The lender or guarantor will send the loan discharge application that is applicable to the type of false certification asserted by the borrower. By completing the loan discharge application, the borrower is certifying specific elements of the eligibility criteria applicable to each of the three categories of the type of false certification provisions asserted. The borrower may also be required to provide additional information or documentation to substantiate the assertion of false certification.

Revise Subsection 13.8.D, page 32, column 1, as follows:

False Certification of Ability to Benefit Based on Not Having a Valid High School Diploma

If the borrower initiates the process by requesting a discharge based on the school’s improper determination of the student’s ability to benefit ~~had a high school diploma or met the alternative to graduation from high school eligibility requirements in 34 CFR 668.32(e) and HEA Section 484(d)~~, the borrower must complete, certify, and submit to the lender or guarantor the ~~Loan Discharge Application: False Certification of Ability to Benefit~~ appropriate false certification loan discharge form approved by the Department. Through submission of this application, the borrower makes all of the following certifications with respect to the borrower or student for whom a parent received a PLUS loan:

- The student received proceeds of a loan, in whole or in part, after January 1, 1986, to attend a school.

- The student ~~was admitted to the school on the basis of the ability to benefit from its training, but did not meet the applicable requirements for admission on the basis of ability to benefit reported not having a valid high school diploma or its equivalent when the loan was certified and did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was certified.~~

[\$682.402(e)(3)(ii) and §685.215(c)(1)]

False Certification Based on Disqualifying Condition

In the case of a borrower requesting a discharge due to a disqualifying status condition, the borrower must complete, certify, and submit to the lender or guarantor the ~~Loan Discharge Application: False Certification (Disqualifying Status)~~ appropriate false certification form approved by the Department. Through submission of this application, the borrower:

- States that he or she (or the student in the case of a PLUS borrower) was unable to meet the legal requirements for employment in the student’s state of residence in the occupation ~~for which that the training program of study for which the borrower received the loan was intended~~ due to age (upon completion of training), physical or mental condition, criminal record, or other reason accepted by the Department.
- ~~Provides information about the state legal requirement for employment that the student could not meet, including a reference to or a copy of the specific state law or regulation.~~
- ~~Provides supporting documentation proving that the borrower had the disqualifying status at the time the loan was certified or originated.~~

[\$682.402(e)(3)(iii) and §685.215(c)(2)]

School Signed Loan Application or Promissory Note

In the case of a borrower requesting a discharge because the school signed the borrower’s name on the loan application or promissory note without the borrower’s authorization, the borrower must complete, certify, and submit to the lender or guarantor the ~~Loan Discharge Application: False Certification (Unauthorized Signature/Unauthorized Payment)~~ appropriate false certification form approved by the Department. Through submission of this application, the borrower ~~states that he or she did not sign the document in question or authorize the school to do so.~~

- ~~States that the signature on the loan application or promissory note is not his or her signature.~~
- ~~Provides five different samples of his or her signature, two of which must be no earlier nor later than one year before or after the date of the contested signature.~~

[\$682.402(e)(3)(iv) and §685.215(c)(3)]

Revise Subsection 13.8.D, page 32, column 2, paragraph 1, as follows:

School Signed Loan Check or EFT Authorization

In the case of a borrower requesting a discharge because the school, without the borrower’s authorization, endorsed the borrower’s name on the loan check or signed the authorization for EFT or master check, the borrower must complete, certify, and submit to the lender or guarantor the ~~Loan Discharge Application: False Certification (Unauthorized Signature/Unauthorized Payment)~~ appropriate false certification form approved by the Department. Through submission of this application, the borrower:

- ~~Certifies States~~ States that he or she did not endorse the loan check or sign the authorization for EFT or master check, or authorize the school to do so.
- ~~Provides five different samples of his or her signature, two of which must be no earlier nor later than one year before or after the date of the contested signature.~~

- States 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 the portion of the educational program completed by the student.

[\$682.402(e)(3)(v) and §685.215(c)(4)]

Revise Subsection 13.8.D, page 32, column 2, paragraph 3, as follows:

Processing the Discharge Application

If a borrower returns to the lender a fully completed and signed loan discharge application, the lender must file a claim according to the requirements outlined in this subsection. However, in a situation in which the borrower claims that the school improperly endorsed or signed the borrower's name on a loan check and that the borrower did not receive the loan proceeds, the lender must first review all available documentation.

If a lender determines that a borrower's assertion is invalid based on persuasive evidence, the lender may interpret the borrower's objection as a statement of intent not to repay the loan and may file a default claim on that basis. However, the lender must not report the loan as defaulted to nationwide consumer reporting agencies until a final determination is made by the guarantor or the Department. [\$682.402(e)(12)(v)(13)(vi) and §685.215(d)(4)]

Revise Subsection 13.8.D, page 33, column 1, as follows:

If a borrower returns to the guarantor a fully completed and signed loan discharge application, the guarantor will review the application and determine the borrower's eligibility for false certification discharge. The guarantor will notify the lender either that the borrower qualifies for loan discharge and the lender must file a false certification loan discharge claim, or the borrower does not qualify for loan discharge and the lender must resume applicable collection activity.

[\$682.402(e)(6)(iv)(8)(i)]

If a borrower submits an incomplete loan discharge application—~~except in the case of a missing signature—the lender or guarantor must promptly return the application to the borrower with an explanation of why the form is considered incomplete, or contact the borrower to obtain the missing information. If the borrower's signature is missing, the lender or guarantor must return the loan discharge application to the borrower~~ notify the borrower and allow him or her an additional 30 days to amend the application and provide supplemental information. If the borrower does not amend the application within 30 days of receiving the notification from the lender or guarantor, the borrower's application is closed as incomplete and the lender resumes collection of the loan, and grants forbearance of principal and interest for the period in which collection activity was suspended. The lender or guarantor must document the borrower's history accordingly. ~~In either situation, the administrative forbearance period described previously in this subsection must not exceed a total of 60 days from the date on which the loan discharge application was originally sent to the borrower.~~

[\$682.402(e)(6)(iii) & (13)(iii); §685.215(d)(3)]

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). The lender is deemed to have exercised forbearance on the loan(s) beginning on the date on which the lender suspended collection activity. The lender may capitalize unpaid interest that accrues during the forbearance period.

[\$682.402(e)(12)(13)(ii); §685.215(d)(2)]

A borrower's request for loan discharge cannot be denied solely due to the borrower's failure to return the completed request within 60 days. If the lender receives a completed loan discharge application

from the borrower at a later date, the lender must process the loan discharge application and, if the borrower appears to qualify for the loan discharge, file a claim with the guarantor.

~~§682.402(e)(6)(v)(7)(vi)]~~

Revise Subsection 13.8.D, page 34, column 2, paragraphs 2 & 4, as follows:

Claim Filing Requirements

A lender must file a false certification loan discharge claim within 60 days of receiving a completed loan discharge application from the borrower or, if the guarantor has obtained the discharge application directly from the borrower, within 60 days from the date of the guarantor's notification to file a false certification loan discharge claim. Failure to meet this timely filing deadline may result in an interest penalty.

§682.402(e)(13)(iv)]

A lender facilitates the timely and accurate processing of a false certification loan discharge claim by ensuring that a completed loan discharge application from the borrower is submitted with each claim. It is critical that each applicable field on the application is completed appropriately.

The lender must forward to the guarantor within 30 days of receipt any borrower payments it receives after the claim has been filed (see Subsection 13.3.E).

§682.402(e)(13)(iv)

Revise Subsection 13.8D., sub-subheading *Claim File Documentation*, beginning on bottom of page 34, column 2, as follows:

Claim File Documentation

If the false certification claim includes FFELP loans with outstanding balances or is comprised solely of FFELP loans paid by or on behalf of the borrower, the lender must submit all of the following documentation:

- The Claim Form, completed according to the instructions that accompany that form.
- The completed applicable loan discharge application due to false certification. If the guarantor or Department initiated the discharge based on knowledge of false certification eligibility, the lender may not be required to submit a loan discharge application.
- ~~Any required borrower signature samples or disbursement checks (as applicable).~~
- ...
- ...
- ...

Revise Subsection 13.8.D., page 35, column 2, paragraph 2, as follows:

Processing an Approved Discharge

If the guarantor determines that a loan is eligible for discharge based on the school signing a loan application or promissory note without the borrower's authorization, or the school improperly determines the student's ability to benefit from the school's training had a high school diploma or met the alternative to graduation from high school eligibility requirements, the guarantor will take the following actions within 30 days of approving the loan discharge or receiving notification from the Department that the borrower is eligible for the false certification loan discharge:

- Notify the borrower that his or her liability on the loan has been discharged with regard to the amount of the contested disbursement(s).
- ~~Instruct all nationwide consumer reporting agencies to which the guarantor previously reported~~

- ~~the status of the loan to delete all adverse credit history associated with the discharged loan.~~
- Refund to the borrower all amounts paid by the borrower to the lender or the guarantor with respect to the discharged loan, including any late fees or collection costs.
 - Pay the applicable amount to the lender. (See information in this subsection regarding claim payment amounts.)
[§682.402(e)(7)(iii)]
 - Notify the lender that the borrower’s loan has been discharged, and that the lender must immediately discontinue 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. Also notify the lender to, within 30 days, instruct all nationwide consumer reporting agencies to which the lender previously reported information on the loan to delete all adverse credit history associated with the discharged loan.
[§682.402(e)(8)(ii)]

Revise Subsection 13.8.D, page 36, column 1, paragraph 2, as follows:

If the guarantor determines that a loan is eligible for discharge based solely on the school signing a borrower’s loan check, ~~or EFT or master check authorization without the borrower’s permission~~, the guarantor will take the following actions within 30 days of approving the discharge:

- Notify the borrower that his or her liability has been discharged with respect to the amount of the contested loan disbursement and that the lender has been informed of the discharge.
- 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.
- Notify the lender that the borrower’s liability has been discharged with respect to the amount of the contested loan disbursement.
[§682.402(e)~~(8)~~(9)(ii)]

Upon receiving notification of the loan discharge from the guarantor as noted in the preceding bullet, the lender must:

- Immediately discontinue 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.
- Within 30 days, instruct all nationwide consumer reporting agencies to which the lender previously reported information on the loan to delete all adverse credit history associated with the discharged loan.
- Within 30 days, refund to the borrower all amounts paid by the borrower with respect to the discharged loan amount, including any charges imposed or costs incurred by the lender related to the discharged loan amount.
- Within 30 days, if applicable, reimburse the guarantor for the discharged loan amount, less borrower refunds.
[§682.402(e)~~(10)~~(11)(ii)(E)]
- Within 30 days, adjust the loan record for any interest benefits and special allowance payments that the lender received on the loan or portion of the loan being discharged and report the adjustment on the next scheduled Lender’s Interest and Special Allowance Request and Report (LaRS report) if the loan is being discharged because the borrower did not endorse and did not receive the proceeds of the loan disbursement check.
[§682.402(e)~~(8)(ii)(B)~~(4)(9)(ii)]

If the guarantor determines that a loan is eligible for discharge based solely on the school signing a borrower’s EFT or master check authorization without the borrower’s permission, the guarantor will

take the following actions within 30 days of approving the discharge:

- Notify the borrower that his or her liability has been discharged with respect to the amount of the contested loan disbursement and that the lender has been informed of the discharge.
- Pay the applicable amount to the lender. (See information in this subsection regarding claim payment amounts.)
- Refund to the borrower all amounts paid by the borrower to the lender or guarantor with respect to the discharged amount, including any late fees or collection costs.
- Notify the lender that the borrower's liability has been discharged with respect to the contested loan disbursement.

Upon receiving notification of the loan discharge from the guarantor as noted in the preceding bullet, the lender must:

- Immediately discontinue 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.
- Within 30 days, instruct all nationwide consumer reporting agencies to which the lender previously reported information on the loan to delete all adverse credit history associated with the discharged loan.

[\$682.402(e)(9)(iii)]

Revise Subsection 13.8.E, page 38, column 2, by adding new paragraph 2, as follows:

If the borrower submits an application for discharge that the lender determines is incomplete, the lender notifies the borrower of that determination and allows the borrower an additional 30 days to amend the application and provide supplemental information. If the borrower does not amend their application within 30 days of the lender's notification that the application is incomplete, the application is closed as incomplete, and the lender resumes collection of the loan and grants forbearance for the suspension.

[\$682.402(e)(13)(iii) and §685.215(d)(3)]

Revise Subsection 13.8.E, page 39, paragraph 1, as follows:

An individual qualifies for loan discharge if the individual does all of the following:

- Certifies that he or she did not sign the promissory note, or that any other means of identification used to obtain the loan were used without the authorization of the individual.
- Certifies that he or she did not knowingly receive or benefit from the proceeds of the loan that had been made without the individual's authorization.
- Provides a statement of facts and supporting evidence that demonstrates, to the satisfaction of the Department, that the individual's eligibility for the loan in question was falsely certified as a result of identity theft committed against the individual. Supporting evidence may include:
 - A judicial determination of identity theft relating to the individual.
 - A Federal Trade Commission identity theft affidavit.
 - A police report alleging identity theft relating to the individual.
 - Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies.
 - Other evidence acceptable to the Department.
- ~~Provides to the lender a copy of a local, state, or federal court verdict or judgment that conclusively determines that the individual who is named as the borrower or endorser of the loan was the victim of a crime of identity theft by a perpetrator named in the verdict or judgment.~~

[§682.402(e)(3)(v)(vi); §685.215(c)(4)(5)]

If the judicial determination of the crime does not expressly state that the loan was obtained as a result of the crime, the individual must provide all of the following:

- Five different samples of his or her signature, two of which must be no more than one year before or one year after the date of the contested signature, or other means of identification of the individual, as applicable, corresponding to the means of identification used falsely to obtain the loan.
- A statement of facts that demonstrates that eligibility for the student loan in question was falsely certified.

{§682.402(e)(3)(v); §685.215(c)(4)}

For the purposes of this subsection, identity theft is considered to be the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable state or local law. Identifying information includes, but is not limited to, any of the following elements:

- Demographic data such as name, SSN, date of birth, official state or government issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.
- Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation.
- Unique electronic identification number, address, or routing code.
- Telecommunication identifying information or access device [as defined in 18 U.S.C. 1029(e)].

[§682.402(e)(14) and §685.215(c)(6)]

Revise Subsection 13.8.E, page 39, column 2, by amending the regulatory citations at the end of paragraphs 1, 3, and 4, as follows:

Processing the Discharge

...

[§682.402(e)(7); §682.402(e)(12)(iii)(13)(iv)]

...

...

[§682.402(e)(12)(13)(ii); §685.215(d)(2)]

...

[§682.402(e)(6)(v)(7)(vi)]

Revise Subsection 13.8.E, page 40, column 1, by amending the regulatory citations at the end of paragraphs 1, 2, and 4, as follows:

Loss of Insurance

...

[§682.402(e)(1)(iii)(iv)]

Claim Filing Requirements

...

[§682.402(e)(12)(iii)(13)(iv)]

...

...

[§682.402(e)(~~12~~)(iii)(13)(iv)]

Revise Subsection 13.8.E, page 40, column 2, by amending the regulatory citation for subheading Claim Filing Documentation after bullet 3, as follows:

- ...

[§682.402(e)(~~12~~)(iv)(13)(v); 682.402(g)(1)]

Revise Subsection 13.8.E, page 40, column 2, by amending the regulatory citation for subheading Processing an Approved Discharge after bullet 5, as follows:

- ...

[§682.402(e)(~~7~~)(8)(ii); 682.215(b)(5) and (d)(~~4~~)(5)]

Revise Subsection 13.8.E, page 41, column 1, by amending the regulatory citation in paragraph 1, as follows:

Upon receiving notification of the loan discharge from the guarantor as noted above, the lender must:

- ...

- ...

[§682.402(e)(~~7~~)(8)(ii)(C)]

Revise Subsection 13.8.E, page 41, column 1, by amending the regulatory citation for subheading Denying the Discharge after bullet 3, as follows:

- ...

[§682.402(e)(~~7~~)(8)(iii); §685.215(d)(~~5~~)(6)]

Revise Subsection 13.8.E, page 41, column 2, by amending the regulatory citation for subheading Denying the Discharge after bullet 1, as follows:

- ...

[§682.402(e)(~~7~~)(8)(iii); §685.215(d)(~~5~~)(6)]

Revise Subsection 13.8.E, page 41, column 2, by amending the regulatory citation for subheading Denying the Discharge after paragraph 1, as follows:

...

[§682.402(e)(~~7~~)(8)(vi)]

PROPOSED LANGUAGE - COMMON BULLETIN:

False Certification Discharge

The Manual is revised to incorporate regulatory changes made to the false certification rules through the Final Rule published on November 1, 2022. Specifically, these revisions:

- Remove ability to benefit certifications made by a school as qualifying a borrower for false certification discharge.
- Add eligibility for false certification discharge based on a school certifying a student who reported not having a high school diploma or its equivalent and did not satisfy the alternative to graduation from high school requirements outlined in the Higher Education Act (HEA) and federal regulations.
- Add eligibility for false certification discharge based on a school certifying a student who was

not a high school graduate based on a high school graduation status falsified by the school or a high school diploma falsified by the school or a third party to which the school referred the borrower.

- Add an additional 30 days for a borrower to amend an incomplete discharge application.
- Remove the requirement for a borrower applying for false certification based on a disqualifying condition to provide information about state legal requirements for employment and supporting documentation proving the borrower had the disqualifying status at the time the loan was certified or originated.
- Remove the requirement that a borrower provide signature samples when applying for discharge based on the school signing his or her name on the loan application or promissory note or signing the EFT or master check authorization without the borrower's permission.
- Remove the requirement that a borrower provide a copy of a local, state, or federal court verdict naming a perpetrator or alternative documentation when applying for false certification discharge based on a crime of identity theft.

The Manual is also revised to more clearly delineate the guarantor and lender actions based on the type of false certification being processed. Finally, the Manual is updated to amend and add regulatory citations where appropriate.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower: The false certification discharge requirements are streamlined, reducing the burden of proof for borrowers.

School: Schools should examine their admission requirements for borrowers to ensure they align with the revised regulations.

Lender/Service: Lenders/service providers should examine their false certification discharge procedures to ensure they align with the revised regulations, and understand the changes to address borrower questions.

Guarantor: Guarantors should examine their false certification discharge procedures to ensure they align with the revised regulations, and understand the changes to address borrower questions.

U.S. Department of Education: The Department may see more borrowers qualify for false certification discharge based on the regulatory changes.

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

POLICY CHANGE PROPOSED BY:

PDMC

DATE SUBMITTED TO POLICY DEVELOPMENT AND MAINTENANCE CONTRACTOR:

November 27, 2022

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

March 9, 2023

PROPOSAL DISTRIBUTED TO:

CM Governing Board
CM Guarantor Designees
Interested Industry Groups and Others

Comments Received from:

Responses to Comments

All commenters supported the proposal as written.

COMMON MANUAL - FEDERAL POLICY PROPOSAL

Date: March 9, 2023

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With Changes	Mar 16, 2023

SUBJECT: Separating Joint Federal Consolidation Loans

AFFECTED SECTIONS: 15.9 Separating Joint Federal Consolidation Loans

POLICY INFORMATION: Y005/1340/Batch 227

EFFECTIVE DATE/TRIGGER EVENT: Borrowers pursuing joint Federal Consolidation Loan separation on or after October 11, 2022

BASIS:
Public Law (P.L.) 117-200, Joint Consolidation Loan Separation Act, 2022, signed into law on October 11, 2022.

CURRENT POLICY:
Current policy does not include information about separating joint Federal Consolidation loans.

REVISED POLICY:
Revised policy explains the Department’s policy for borrowers who want to separate their joint (spousal) Federal Consolidation loans into separate Direct Consolidation loans.

REASON FOR CHANGE:
Higher Education Act §428C(a)(3)(B)(V)(dd) and §455(g).

PROPOSED LANGUAGE - COMMON MANUAL:
Add new Subsection 15.9, page 17, column 2, as follows:

Separating Joint Federal Consolidation Loans

Information in this section describes the Department’s policy on separating joint (spousal) Federal Consolidation loans. A married couple, or two individuals who were previously married, that obtained a joint Federal Consolidation loan may apply with the Department to separate their joint loan obligation into separate Direct Consolidation loans. Borrowers with a joint Federal Consolidation in default can pursue separation.

In general, the borrowers of the Federal Consolidation loan must jointly apply with the Department to separate their loans. However, an individual borrower may apply separately (without regard to when or if the other borrower applies) in the following situations:

- If the borrower has experienced an act of domestic or economic violence from the other individual borrower (as defined in section 40002 of the Violence Against Women Act of 1994, 34 U.S.C. 12291).
- If the borrower is unable to reasonably reach or access the loan information of the other individual borrower.
- If the Department determines that authorizing each individual borrower to apply separately is in the best fiscal interests of the federal government.

In the case of an individual borrower obtaining a separate Direct Consolidation loan due to one of the above situations, the nonapplying individual borrower will become solely liable for the remaining balance of the joint Federal Consolidation loan.

The Department will use the unpaid principal and interest balance of the Federal Consolidation loan and the percentages of the Federal Consolidation loan attributable to each individual borrower to determine the amount of the new Direct Consolidation loans. The percentages are based on the loans included when the Federal Consolidation loan was made, or, at the requests of both borrowers, on the proportions outlined in a divorce decree, court order, or settlement agreement. The new Direct Consolidation loan will have the same interest rate that applies to the Federal Consolidation loan on the day prior to when the new Direct Consolidation loans is made.

[HEA, §428C(a)(3)(B)(V)(dd); HEA §455(g)]

PROPOSED LANGUAGE - COMMON BULLETIN:

Separating Spousal Federal Consolidation Loans

The Manual has been updated to explain the Department’s policy for borrowers who want to separate their joint (spousal) Federal Consolidation loans into separate Direct Consolidation loans. The new section provides general information on the eligibility criteria and determining the amounts of the individual Direct Consolidation loans.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower: Borrowers who have joint (spousal) Federal Consolidation loans now have a path to separate their loan obligations into separate Direct Consolidation loans.

School: None.

Lender/Service: Lenders/serviceers may see an increase in loan verification certificates for borrowers pursuing Direct Loan consolidation.

Guarantor: Guarantors may see an increase in loan verification certificates for defaulted borrowers pursuing Direct Loan consolidation.

U.S. Department of Education: The Department may see an increase in borrowers requesting separation of their joint Federal Consolidation loans.

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

POLICY CHANGE PROPOSED BY:

PDMC

DATE SUBMITTED TO POLICY DEVELOPMENT AND MAINTENANCE CONTRACTOR:

October 12, 2022

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

March 9, 2023

PROPOSAL DISTRIBUTED TO:

CM Governing Board
CM Guarantor Designees
Interested Industry Groups and Others

Comments Received from:
NCHER, PHEAA, PPSV, and VSAC

Responses to Comments

All commenters supported the proposal as written.