

Closed School Discharge

Overview

CSPEN supports fair and equitable regulatory proposals that promote and protect students in the event of an institution terminating a program, as well as events that lead to an institution closing.

However, we believe that the Department's regulatory proposal convolutes the process of planned program closure and beneficial implementation of new/revised programs in ways that may be highly detrimental to the student and the institution.

Moreover, it appears that the Department seeks to provide new regulatory guidance in the actual event of institutional closure that are overly restrictive and once again may well be very harmful to the students the regulations seek to protect.

Requests For Further Consideration

We hope that both the Office of Information and Regulatory Affairs within the Office of Management and Budget and the U.S. Department of Education will consider the following recommended revisions to the regulatory proposals contained in the *"Proposed Regulatory Text for Issue Paper #2: Closed School Discharge (Session Three: December 6-10, 2021)"*.

1. Repeal the proposals related to programmatic terminations, including the granting of borrower relief.

Part 674—Federal Perkins Loan Program * * * * *

§ 674.33 Repayment. * * * * *

(g) Closed school discharge - (1) General.

(i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section –

(A) A school's closure date is the earlier of the date that the school ceases to provide educational instruction in all most all programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the institution school had ceased to provide educational instruction for most of its students;

(B) "School" means a school's main campus or any location or branch of the main campus regardless of whether the school or its location or branch is considered eligible; and

(C) The "holder" means the Secretary or the school that holds the loan; and

~~(D) "Program" means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if:~~

- ~~1) The enrollment occurred at the same institution school in closely proximate periods;~~

- ~~2) The school granted a credential in a program while the student was enrolled in a different program; or~~
~~3) The programs stack or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment.~~

*Note: Conforming revisions would be made to all other appropriate sections of the proposed regulatory revisions. (e.g. Part 682—Federal Family Education Loan (FFEL) Program: § 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments & Part 685--William D. Ford Federal Direct Loan Program: §685.214 Closed school discharge)

2. Amend the proposed revisions to the definition of a “closed school” including any facility of an institution that was properly identified on the institution’s ECAR as offering greater than fifty percent (50%) of at least one program, and no longer uses that facility (regardless of the circumstances or rationale).

Research suggests that there have been over 18,000 institutions that have closed by the Department’s proposed definition. Eighty-one percent (81%) at non-profit institutions or more than 13,000 in the last 20 years.

Part 685--William D. Ford Federal Direct Loan Program

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§685.214 Closed school discharge.

(a) General.

(1) The Secretary discharges the borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if the borrower (or the student on whose behalf a parent borrowed) did not complete the program of study for which the loan was made because the school at which the borrower (or student) was enrolled closed, as described in paragraph (c) of this section.

(2) For purposes of this section -

(i) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary, except that a school is not considered closed for purposes of a closed school discharge if:

- a) the school continues to offer educational instruction by an eligible institution from the same location under the same ownership or control (to include a surviving institution in the case of a merger); or
- b) the school is or was associated with an eligible institution that has another eligible location within 20 miles from the closed location and the student is able to continue the same program or a comparable program with minimal interruption or delay; or
- c) Prior to the closure of an additional location, the student was enrolled in a program offered predominately online, and the student is able to complete that same program or a comparable program at the same eligible institution with minimal interruption or delay.

(ii) "School" means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered eligible.

*Note: Conforming revisions would be made to all other appropriate sections of the proposed regulatory revisions. (e.g. Part 674—Federal Perkins Loan Program: § 674.33 Repayment & Part 682—Federal Family Education Loan (FFEL) Program: § 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments)

3. Amend the proposal which incentivizes borrowers, especially those close to the conclusion of their program and corresponding credential, from seeking a discharge in lieu of either transfer or teach-out.

Part 682—Federal Family Education Loan (FFEL) Program * * * * *

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments. * * * * *

(d) Closed school - (1) General.

(i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than ~~120~~ 180 120 days prior to the date the school closed. The Secretary may extend the ~~120~~ 180-day 120-day period if the Secretary determines that exceptional circumstances, as described in paragraph (d)(9) of this section, ~~related to a school's closing~~ justify an extension. ~~Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law.~~

*Note: Conforming revisions would be made to all other appropriate sections of the proposed regulatory revisions. (e.g. Part 674—Federal Perkins Loan Program: § 674.33 Repayment & Part 685--William D. Ford Federal Direct Loan Program: §685.214 Closed school discharge)

4. Ensure that the new regulations are not retroactive in nature.

During the negotiations, a non-federal negotiator sought confirmation from the Department that none of the proposed revisions contemplated under Issue Paper #2 would be applied retroactively. Ms. Hung, on behalf of the Department stated that none of the regulations would be applied retroactively.

CSPEN seeks to reaffirm and request assurances that the Notice of Proposed Rulemaking and Final Regulations retains this important