

Issue Paper 4
Session 1: January 12 -14, 2015

Issue: Update and expand the existing categories of false certification discharges

Statutory cites: §437(c) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087(c)

Regulatory cites: 34 CFR 682.402, 685.215

Summary of issue:

The Higher Education Act of 1965 (HEA) provides that if a student's eligibility to borrow "was falsely certified by the eligible institution or was falsely certified as a result of a crime of identity theft . . . then the Secretary shall discharge the borrower's liability on the loan (including interest and collection fees)." 20 U.S.C. § 1087(c)(1). The Department of Education's (Department's) current regulation defines the basis for a false certification Direct Loan discharge as when "a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the loan." The categories under which such a determination may be made include:

- *When borrower eligibility is determined on the basis of the borrower's ability to benefit from the institution's training and the student did not meet the eligibility requirements;*
- *When the institution signed the borrower's name on the loan application or promissory note without the borrower's authorization;*
- *When the institution certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet the requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; and*
- *When the institution certified the borrower's eligibility for a Direct Loan as a result of the crime of identity theft committed against the individual.*

Questions to be considered by the negotiating committee if the Department seeks to update or expand the grounds for false certification discharge include:

1. Are there additional categories of false certification that should be considered?
 - Public commenters suggested the categories include situations wherein an institution misled borrowers about job prospects, the total cost of their education (including the portions covered by grants versus loans), the quality of the programs, and individuals' eligibility to qualify for certain jobs; in cases of electronic fraud; in instances in which an institution's acts meet the

standard for a federal UDAAP (unfair, deceptive or abusive act or practice under 12 U.S.C. 5531) violation; in instances in which an institution violated the HEA or the regulations thereunder; and when an institution violated the Federal Trade Commission's Guides for Private Vocational and Distance Education Schools (also known as the Vocational School Guides).¹

2. When the false certification rule was established in 1994, it was not intended to cover misrepresentations pertaining to the characteristics of a program or institution, only misrepresentations about the eligibility of the student for employment in a chosen field. Are there eligibility misrepresentations that are currently unaddressed by the existing regulation?
3. Is there a reason(s) why acts or omissions falling into these proposed categories should be treated differently than under any standard for Borrower Defense to Repayment (DTR) claims to be put in place?

¹ A number of categories suggested (e.g., misrepresentations by institutions, institutional acts meeting the standard for a federal UDAAP, and instances relating to a violation an HEA or regulatory requirement) are also raised in the Department's Issue Paper 1, about whether a new standard should be established for the purpose of determining whether a borrower can establish a defense to repayment on a loan, and may be discussed in the context of that Issue Paper.