

**State of California
Office of Administrative Law**

In re:
Bureau for Private Postsecondary Education

Regulatory Action:

Title 05, California Code of Regulations

Adopt sections:

Amend sections: 71396, 71397, 71398

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

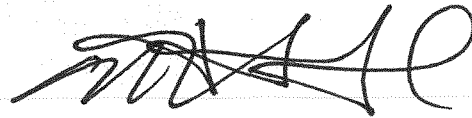
OAL Matter Number: 2022-1228-04

OAL Matter Type: Regular (S)

In this rulemaking action, the Bureau amends its regulations in response to statutory changes made in Senate Bill 1433 (Stats. 2022, c. 544). The amendments allow conditional approval of out-of-state institution registrations and establishes the criteria for the conditional approvals. This action also updates Form 94801.5, Application for Registration or Re-Registration of Out-of-State Institutions.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 2/10/2023.

Date: February 10, 2023



Thanh Huynh
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Deborah Cochrane, Chief
Copy: David Dumble

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2022-1028-05	REGULATORY ACTION NUMBER 2022-1228-045	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
		OFFICE OF ADMIN. LAW 2022 DEC 28 PM 1:26	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Consumer Affairs, Bureau for Private Postsecondary Education			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
 In the office of the Secretary of State
 of the State of California

FEB 10 2023

1:41pm

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Registration of Out-of-State Institutions	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 71396, 71397, 71398 per agency request
TITLE(S) 5	REPEAL 2/10/2023 (TH)

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON David Dumble	TELEPHONE NUMBER (279) 895-6091	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) David.Dumble@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kimberly Kirchmeyer</i>	DATE December 2, 2022
TYPED NAME AND TITLE OF SIGNATORY Kimberly Kirchmeyer, Director, Department of Consumer Affairs	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 10 2023

Office of Administrative Law

California Code of Regulations
Title 5. Education
Division 7.5. Private Postsecondary Education
Chapter 2. Applications
Article 3.5. Registration or Re-registration of Out-of-State Institutions

PROPOSED REGULATORY LANGUAGE CONCERNING: APPLICATION OF OUT-OF-STATE INSTITUTIONS

New language is underlined. Deleted language is ~~strikeout~~.

(1) Amend Section 71396 of Division 7.5 of Title 5 of the California Code of Regulation to read as follows:

§ 71396. Application Form; STRF Compliance.

(a) An applicant seeking to operate an out-of-state private postsecondary institution, as defined in Section 94850.5 of the Code, that is required to register with the Bureau pursuant to Section 94801.5 of the Code, shall complete the Bureau's Application for Registration or Re-Registration of Out-of-State Institutions [Form Application 94801.5 (rev. ~~4/17~~ 8/22)], which is hereby incorporated by reference. An applicant shall submit to the Bureau the completed form, the information and documentation required by Section 94801.5 of the Code, and the registration fee as provided in Section 94930.5 of the Code.

(b) An application that does not contain all the information required by this section or as applicable, section 71398, shall render it incomplete, and the applicant will not be eligible for registration or re-registration.

(c) Effective July 1, 2017, even if the out-of-state institution's application for registration is pending with the Bureau, the institution shall immediately comply with the requirements of the Student Tuition Recovery Fund established in the Code (commencing with Section 94923) and regulations adopted by the Bureau related to the fund for its California students. These requirements include the collection and submission of assessments and related record-keeping as required by sections 76120, 76130, and 76140, and providing student disclosures in the school catalog and enrollment agreement as required by sections 76215 and 71800(e)(11) and prior to closing as required by section 76240(b)(2).

Note: Authority cited: Sections 94801.5 and 94877, Education Code. References: Sections 94801.5, 94850.5, 94909(a)(14), 94911(b), 94923, 94924, 94930.5, ~~94923~~, ~~94924~~, ~~94909(a)(14)~~, and ~~94911(b)~~, Education Code.

(2) Amend Section 71397 of Division 7.5 of Title 5 of the California Code of Regulation to read as follows:

§ 71397. Processing of Completed Applications; Appeal of Denials, Conditional Registration and Grounds for Revocation.

(a) Pursuant to the requirements of section 94801.5 of the Code and this Article, the Bureau will either ~~grant~~ approve, condition registration upon meeting specified conditions or restrictions (“conditional registration”), or deny an application for registration approval to any applicant.

(1) Conditional registration shall be issued to those institutions which answer “yes” to any question in sections 7 or 9 of the Form Application 94801.5 referenced in section 71396 and for whom the Bureau determines that an unconditional registration is not in the public interest based on the criteria set forth in this section. For the purposes of this section, “action” shall include enforcement actions by state or federal authorities, civil actions, adverse action by an accreditor, borrower defense claim, or any other action as specified or disclosed in section 9 of Form Application 94801.5 referenced in section 71396. In determining if an unconditional registration is not in the public interest, the Bureau shall consider the following:

(A) Nature and severity of the act(s), demonstrated in the action under consideration.

(B) Actual or potential harm to any consumer, student or the general public.

(C) Prior record of any actions.

(D) Number and/or variety of current actions.

(E) Any explanation of the facts and circumstances surrounding the action(s) and any remediation efforts the institution undertook as a result of the action.

(F) In the case of any action involving a criminal conviction, compliance with terms of sentence and/or court ordered probation.

(G) Overall criminal record disclosed to the Bureau, if any.

(H) Time passed since the action(s) or offense(s) occurred.

(I) Whether or not the applicant cooperated with the Bureau’s investigation, other law enforcement or regulatory agencies, and/or the injured parties.

(J) Recognition by the applicant of its wrongdoing and demonstration of corrective action to prevent recurrence.

(2) Conditions placed upon the approval of an application include increased or more frequent reporting requirements on a regular basis or as requested by the Bureau, and limitations on enrollment of Californians in some or all programs.

(3) A denial shall be issued if the Bureau determines there is a substantial risk of harm posed to California residents by the institution if it were permitted to enroll California residents based on the criteria enumerated in subdivision (a)(1) or on the applicant's failure to comply with any requirements set forth in this Article or Section 94801.5 of the Code.

(4) An institution shall be registered in accordance with Section 94801.5 of the Code if it:

(A) meets all requirements of this Article and Section 94801.5 of the Code, and

(B) there are no grounds for denial as set forth in this section.

(5) Any registration subject to this section shall be made effective by the Bureau upon the applicant's meeting the requirements specified in subdivision (a)(4).

(b) (1) An applicant denied a registration or re-registration under this Article or issued a conditional registration shall be given written notice of the Bureau's decision to deny or condition registration, the reasons for the decision and the right to request an informal conference in accordance with this section.

(2) If a conditional registration is issued, the written notice shall also specify the restrictions or conditions placed on the institution's registration, and the factual basis for the restrictions or conditions.

(3) Failure to comply with any restriction or condition placed on a registration by the Bureau is grounds for revocation of the registration. Any institution determined to be in noncompliance with any restriction or condition of a conditional registration shall receive written notice of the Bureau's decision to revoke the registration, the reasons for the decision and the right to request an informal conference in accordance with this section. The written notice shall also contain a written finding that there is a substantial risk of harm posed to California residents by the institution continuing to enroll California residents and the reasons for that finding using the criteria set forth in subdivision (a)(1).

(c) The applicant may reapply if denied or may, within 30 days of service of the denial decision to deny, revoke or issue conditional registration, submit a written request to the Bureau for an informal conference with the Bureau Chief or his or her designee. Failure to request an informal conference within 30 days from service of the denial, revocation or conditional registration waives the right to the informal conference.

(ed) The Bureau Chief, or his or her designee, shall within 30 days from the Bureau's receipt of a written request for an informal conference, hold an informal conference with the applicant or out-of-state registered institution. The Bureau Chief, for good cause such as scheduling conflicts or medical emergencies, may extend the 30-day period. The informal conference may be by telephone.

(de) Prior to or at the informal conference, the applicant or out-of-state registered institution may submit to the Bureau Chief, or his or her designee, declarations or documents pertinent to the application for registration or re-registration, which shall be duly considered along with any other relevant documentation.

(ef) Following the informal conference, the Bureau Chief, or his or her designee, will affirm, modify, or reverse the denial, revocation, or issuance of a conditional registration. A written order affirming, modifying, or reversing the denial, revocation or conditional registration decision shall be served on the applicant within 30 days from the informal conference, unless extended for good cause, including allowing the applicant or out-of-state registered institution to submit, and the Bureau to consider, additional documentation.

Note: Authority cited: Sections 94801.5 and 94877, Education Code. Reference: Sections 94801.5, 94850.5 and 94930.5, Education Code; 480.2, Business and Professions Code.

(3) Amend section 71398 of Division 7.5 of Title 5 of the California Code of Regulation to read as follows:

§ 71398. Re-Registration

(a) Unless re-registered, a registration shall expire at 12:00a.m. on the day immediately following the last day of the out-of-state private postsecondary institution's registration as granted pursuant to section 94801.5 of the Code and this Article.

(b) An out-of-state institution seeking to renew its registration pursuant to section 94801.5 of the Code shall complete and submit to the Bureau a new "Application for Registration or Re-Registration of Out-of-State Institution" [Form Application 94801.5 (rev. 4/178/22)], which is hereby incorporated by reference. An applicant shall submit to the Bureau the completed form, the information and documentation required by Section 94801.5 of the Code, and the registration fee as provided in Section 94930.5 of the Code.

(c) If the Bureau receives a complete re-registration application prior to the expiration of the registration, which consists of the completed form, the information and documentation required by Section 94801.5 of the Code, and the registration fee as provided in Section 94930.5 of the Code, and the out-of-state institution has complied with the Student Tuition Recovery Fund requirements of the Code and this Division, the out-of-state institution shall be deemed re-registered, pending the granting or denial of the application for re-registration by the Bureau pursuant to section 71397 of this Division. Upon the Bureau's granting of the re-registration application, the effective date of the re-registration shall be the date the Bureau received the complete re-registration application.

(d) Failure of an out-of-state institution to make the required payments of the assessments to the Student Tuition Recovery Fund as required by section 76130 shall render the institution ineligible for a re-registration.

Note: Authority cited Sections 94801.5 and 94877, Education Code. Reference: Sections 94801.5, 94850.5, and 94930.5, Education Code.



P.O. Box 980818 West Sacramento, CA 95798-0181

P (916) 574-8900 | Toll-Free (888) 370-7589 | www.bppe.ca.gov

Application for Registration or Re-Registration of Out of State Institutions

(California Education Code §§ 94801.5, 94850.5, 94930.5; Title 5, California Code of Regulations §§ 71396, 74000, 76130, 76215)

(\$1,500.00 fee to register and re-register)

Effective July 1, 2017, an out-of-state private postsecondary educational institution must register with the Bureau or is not authorized to enroll California students. (Ed. Code § 94801.5.) "Out-of-state private postsecondary educational institution" means a private entity without a physical presence in California that offers postsecondary distance education to California students for a fee, regardless of whether the entity has any affiliates located in California. (Ed. Code § 94850.5.) Non-public higher education institutions that are degree granting, non-profit, and accredited are exempt and need not register. (Ed. Code § 94801.5(b).) Each registration and re-registration application carries a nonrefundable fee of \$1,500.00 ~~and is valid for two years.~~ An approved registration is valid for five years. (Ed. Code §§ 94930.5(e)(1), 94801.5(d).)

To be eligible to register (or for re-registration after expiration of a prior registration), the \$1,500 fee and following any applicable documentation identified below must be included with the information required in this application:

- ~~1. Verification that the institution is accredited by an accrediting agency recognized by the United States Department of Education.~~
- ~~2. Verification that that the institution is approved to operate in the state where it maintains its main administrative location.~~
- ~~3. A copy of the institution's (a) catalog and (b) enrollment agreement for its California students, including the required Student Tuition Recovery Fund disclosures.~~
- ~~4. A \$1,500.00 non-refundable registration fee.~~

Check one of the following:

- This is an initial application for registration. (The Bureau has not previously granted a registration).
- or
- This is an application for re-registration. (The Bureau previously granted a registration; Number _____).

If this is an application for re-registration, check the following statements if accurate:

- The institution certifies that it has remitted Student Tuition Recovery Fund assessments collected from its California students to the Bureau.
- The institution certifies that it has provided Student Tuition Recovery Fund disclosures to its California students in its catalog and/or enrollment agreement.

OFFICE USE ONLY			
Date Stamp	SAIL Application # _____	Institution Code _____	
	Application Fee <u>Received</u> _____	Date _____	Revenue Code *****125700-2E

SECTION 1. – OUT-OF-STATE INSTITUTION				
Legal Name of Institution:				
Business Form (please check only one):				
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Company (LLC)	<input type="checkbox"/> Corporation (For-Profit)	<input type="checkbox"/> Corporation (Non-Profit)
DBA or Trade Name of Institution (If different than legal name):				
Institution's Main Administrative Address:				
City:	State:	Zip:		
Phone Number:		Fax Number:		
Website Address:				

SECTION 2. – INSTITUTION'S CONTACT PERSON (for this application) FOR THIS APPLICATION		
Name:	Email address:	
Address:		
City:	State:	Zip:
Telephone Number:	Fax Number:	

SECTION 3. – INSTITUTION'S CALIFORNIA AGENT FOR SERVICE OF PROCESS		
The institution is required to designate and maintain an agent for service of process who is physically within this state, and provide the name, address, and telephone number of the agent to the Bureau.		
Name:		
Address:		
City:	State:	Zip:
Telephone Number:	Email Address (optional):	

SECTION 4. – AFFILIATED INSTITUTION(S) IN CALIFORNIA (if any)
Identify any affiliated institutions or affiliated institutional locations the out-of-state institution has in California. Attach additional sheets pages if necessary. An affiliate <u>means your school or program has a formal collaborative agreement with another school or program where your school or program agrees to utilize the policies, curriculum, facilities, employees or equipment of the other school or program, or it is an entity that is related to the out-of-state institution by financial interests or other means of control, including the same ownership or management (by the same individual(s) or business entity).</u>
Legal Name of Affiliate Institution:
Institution/School Code with the Bureau:
Business Form (please check only one):

<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Company (LLC)	<input type="checkbox"/> Corporation (For-Profit)	<input type="checkbox"/> Corporation (Non-Profit)
DBA or Trade Name of Affiliate Institution or Affiliate Locations (if different than legal name):				
Affiliate Institution's California Address(es):				
City:	State:	Zip		
Phone Number:			Fax Number:	

Complete sections 5 through 9 as applicable.

<u>SECTION 5. – ACCREDITATION</u>
Attached is verification of accreditation granted by the institution's accrediting agency that is recognized by the United States Department of Education. <input type="checkbox"/>
Document is attached: _____ (initial)

<u>SECTION 6. – STATE AUTHORIZATION</u>
Attached is verification that the institution is approved to operate in the state of its main administrative location. <input type="checkbox"/>
Document is attached: _____ (initial)

<u>SECTION 7 – FINANCIAL RESPONSIBILITY</u>
(a) <u>If applicable, for institutions participating in federal student financial aid programs under Title IV of the Higher Education Act (20 U.S.C. 1070 et seq.) ("participating institutions"), attach the institution's Financial Responsibility Composite Scores as described and calculated in Title 34, Code of Federal Regulations (C.F.R.) sections 668.171 and 668.172 for the past five years, as determined by the U.S. Department of Education.</u>
Documents are attached: _____ (initial)
(b) <u>If applicable, for participating institutions, was the institution placed on Heightened Cash Monitoring as described in 34 C.F.R. section 668.162?</u>
<input type="checkbox"/> Yes (statement attached) <input type="checkbox"/> No _____ (initial)
<u>If "yes", provide the dates that the institution was placed on Heightened Cash Monitoring and specify if it was Level 1 or Level 2 in a statement attached to this application.</u>

<u>SECTION 7.8 – CATALOG AND ENROLLMENT AGREEMENT (STRF Student Disclosures)</u>
Attached are <u>is a copy/copies</u> of the current catalog and a sample enrollment agreement for California students <u>or other documentation</u> showing the required Student Tuition Recovery Fund (STRF) <u>student disclosures</u> .
<input type="checkbox"/> Catalog attached: _____ (initial)
<input checked="" type="checkbox"/> Enrollment Agreement

For institutions that use enrollment agreements, attached is a copy of an enrollment agreement for California students showing the required STRF student disclosures as referenced in Title 5, California Code of Regulations (CCR) section 71396(c).

Enrollment agreement attached: _____ (initial)

For institutions that do not use enrollment agreements, attached are documents showing how the required STRF student disclosures were provided to California students.

Documents attached: _____ (initial)

Attached are copies of the STRF records required to be kept by 5 CCR section 76140 for each California student for the past five years. If this is a new application, please attach a copy of a spreadsheet formatted to collect the information required by 5 CCR section 76140.

Documents are attached: _____ (initial)

SECTION 9 – EXPLANATION OF PRIOR OR PENDING ACTIONS For the purposes of this section, “controlling officer” shall mean “person in control” as defined in California Education Code (CEC) section 94856 and “controlling interest” or “controlling investor” shall mean a person who owns 25% or more in stock of the institution as set forth in CCR section 71130.

1. Has the institution, or a predecessor institution under substantially the same control or ownership as specified in CEC sections 94822 and 94823, had its authorization or approval revoked or suspended by a state or the federal government, or, within five years before submission of the registration or re-registration application, has the institution been subject to an enforcement action by a state or the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration or re-registration application? If yes, the institution shall provide the Bureau with a statement describing the relevant actions, providing an explanation of the facts and circumstances surrounding the action(s) and any remediation efforts the institution undertook as a result of the action(s).

Yes (statement attached) No _____ (initial)

2. Has the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years prior to submitting the registration or re-registration application? If yes, the institution shall provide the Bureau a copy of the operative complaint with the registration or re-registration application.

Yes (statement attached) No _____ (initial)

3. Is the institution currently on probation, show cause, or subject to other adverse action (as defined at 34 CFR sec. 602.3(b) as revised 9/2020), or the equivalent thereof, by its institutional accreditor or by a programmatic accreditor, or has the institution had its accreditation revoked or suspended within the five years prior to submitting the registration or re-registration application? If yes, the institution shall provide the Bureau with a statement describing the relevant action(s), providing an explanation of the facts and circumstances surrounding the action(s) and any remediation efforts the institution undertook as a result of the action(s).

Yes (statement attached) No _____ (initial)

4. Has the institution, within five years prior to submitting the registration or re-registration application, settled, or been adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX of the federal Education Amendments of 1972 (Public Law 92-318) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars (\$250,000)? If yes, the institution shall provide the Bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement.

Yes (statement attached) No (initial)

5. Does the institution currently contract with any third parties for advertising, recruiting, instruction, or student services activities which, to the institution's knowledge, within the past five years, have settled, or been adjudged to have liability for, a civil complaint concerning consumer protection, unfair practices, or fraud, for more than two hundred fifty thousand dollars (\$250,000)? If yes, the institution shall provide the Bureau a copy of any contract between the institution and the third party and a statement listing the case name, case number and court or jurisdiction where the civil complaint was filed.

Yes (statement attached) No (initial)

6. Is the institution aware of current or former students having filed borrower defense claims as described in Title 34 C.F.R. section 685.206, revised 9/2019, with the Department of Education in the past five years? If yes, the institution shall provide the Bureau with the number of known borrower defense claims filed in each year of the past five-year period.

Yes (statement attached) No (initial)

7. Has the applicant or any person in control of the institution (as defined in CEC 94856) ever been convicted of a crime substantially related to the operation of an institution of higher education? For the purposes of this question, "substantially related" shall have the meaning set forth in CCR section 75060.

If yes, the institution shall provide the Bureau with a statement listing the name and title of the individual, and the details regarding any criminal conviction on a separate sheet attached to this application including: the date and place of arrest, name of court, court case number, code section violated, brief explanation of the offense, the sentence imposed and any information regarding rehabilitation efforts that the applicant or person in control would like to submit.

Note: Applicants or persons in control are not required to disclose any of the following:

(i) Convictions dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (if such expungement occurred, please provide a copy of the court document showing the dismissal of the applicable criminal conviction(s) with this application);

(ii) Felony convictions for which the person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code;

(iii) Convictions that were adjudicated in the juvenile court; or,

(iv) Convictions under California Health and Safety Code sections 11357(b), (c), (d), (e), or section 11360(b) which are two years old or older.

Yes (statement attached) No (initial)

8. Attach copies of the policies and procedures under which a student may withdraw from or cancel enrollment, and the institution's policy for refunds, if not included in catalog and/or enrollment agreement in section 8.

Documentation attached: _____ (initial)

SECTION 8.10 – CERTIFICATION UNDER PENALTY OF PERJURY

I hereby certify, under penalty of perjury under the laws of the State of California, that I am a person authorized to act for and bind the applicant and that all statements, answers, and representations made on this form and any accompanying attachments are true, complete, and accurate to the best of my knowledge. ~~By submitting this form and signing below,~~ I am granting permission to the Bureau for Private Postsecondary Education to verify the information provided. By submitting this form and signing below, this institution agrees, as a condition of registration, to be bound by Section 94801.5 of the California Education Code. I acknowledge that the institution's registration may be rejected, conditioned, or revoked as provided by Section 94801.5.

Authorized Signature:	Date:
Print of Type Name:	Title:

NOTICE ON COLLECTION OF PERSONAL INFORMATION

The information requested on this application is mandatory pursuant to Education Code sections 94801.5, 94850.5 and Title 5 CCR section 71396. Failure to provide all of the information requested will result in the application being rejected as incomplete. The information provided will be used to determine qualification of the applicant for registration by the Bureau for Private Postsecondary Education (Bureau) as an out-of-state private postsecondary educational institution. The information may be provided to other governmental agencies, or in response to a court order, subpoena, or public records request. You have a right of access to records containing personal information maintained by the Bureau unless the records are exempted from disclosure by law. For questions about this notice or access to your records, you may contact the Bureau for Private Postsecondary Education, P.O. Box 980818, West Sacramento, CA 95798, by phone at (916) 434-6959-574-8900, or by email at bppe@dca.ca.gov.

This content is from the eCFR and is authoritative but unofficial.

Displaying title 34, up to date as of 2/07/2023. Title 34 was last amended 1/30/2023.

Title 34 - Education

Subtitle B - Regulations of the Offices of the Department of Education

Chapter VI - Office of Postsecondary Education, Department of Education

Part 602 - The Secretary's Recognition of Accrediting Agencies

Subpart A - General

§ 602.3 What definitions apply to this part?

- (a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

- (1) Accredited.
- (2) Additional location.
- (3) Branch campus.
- (4) Correspondence course.
- (5) Direct assessment program.
- (6) Distance education.
- (7) Institution of higher education.
- (8) Nationally recognized accrediting agency.
- (9) Preaccreditation.
- (10) Religious mission.
- (11) Secretary.
- (12) State.
- (13) Teach-out.
- (14) Teach-out agreement.
- (15) Teach-out plan.

- (b) The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or agency means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or adverse action means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Compliance report means a written report that the Department requires an agency to file when the agency is found to be out of compliance to demonstrate that the agency has corrected deficiencies specified in the decision letter from the senior Department official or the Secretary. Compliance reports must be reviewed by Department staff and the Advisory Committee and approved by the senior Department official or, in the event of an appeal, by the Secretary.

Designated Federal Official means the Federal officer designated under section 10(f) of the Federal Advisory Committee Act, 5 U.S.C. Appdx. I.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is a decision made by the agency, at the conclusion of any appeals process available to the institution or program under the agency's due process policies and procedures.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Monitoring report means a report that an agency is required to submit to Department staff when it is found to be substantially compliant. The report contains documentation to demonstrate that -

- (i) The agency is implementing its current or corrected policies; or
- (ii) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation.

Recognition means an unappealed determination by the senior Department official under § 602.36, or a determination by the Secretary on appeal under § 602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its application of those criteria. A grant of recognition to an agency as a reliable authority regarding the quality of education or training offered by institutions or programs it accredits remains in effect for the term granted except upon a determination made in accordance with subpart C of this part that the agency no longer complies with the subpart B criteria or that it has become ineffective in its application of those criteria.

Representative of the public means a person who is not -

- (1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;
- (2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or
- (3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or scope means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to -

- (i) Types of degrees and certificates covered;
- (ii) Types of institutions and programs covered;
- (iii) Types of preaccreditation status covered, if any; and
- (iv) Coverage of accrediting activities related to distance education or correspondence courses.

Senior Department official means the official in the U.S. Department of Education designated by the Secretary who has, in the judgment of the Secretary, appropriate seniority and relevant subject matter knowledge to make independent decisions on accrediting agency recognition.

Substantial compliance means the agency demonstrated to the Department that it has the necessary policies, practices, and standards in place and generally adheres with fidelity to those policies, practices, and standards; or the agency has policies, practices, and standards in place that need minor modifications to reflect its generally compliant practice.

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009; 84 FR 58917, Nov. 1, 2019; 85 FR 54812, Sept. 2, 2020]

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> CHAPTER VI - OFFICE OF POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION
> PART 685 - WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM > Subpart B - Borrower Provisions
> **§ 685.206 Borrower responsibilities and defenses.**

34 CFR § 685.206 - Borrower responsibilities and defenses.

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§ 685.206 Borrower responsibilities and defenses.

Link to an amendment published at [87 FR 66055](#), Nov. 1, 2022.

(a) The borrower must give the school the following information as part of the origination process for a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan:

(1) A statement, as described in [34 CFR part 668](#), that the loan will be used for the cost of the student's attendance.

(2) Information demonstrating that the borrower is eligible for the loan.

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation Loan or Direct Consolidation Loan.

(4) A statement authorizing the school to release to the Secretary information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b)

(1) The borrower must promptly notify the Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The borrower must promptly notify the school of any change in address during enrollment.

(c) ***Borrower defense to repayment for loans first disbursed prior to July 1, 2017.***

(1) For loans first disbursed prior to July 1, 2017, the borrower may assert a borrower defense under this paragraph. A "borrower defense" refers to any act or omission of the school attended by the student that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part.

(ii) A claim to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(2) The order of objections for defaulted Direct Loans are as described in [§ 685.222\(a\)\(6\)](#). A borrower defense claim under this section must be asserted, and will be resolved, under the procedures in [§ 685.222\(e\)](#) to (k).

(3) For an approved borrower defense under this section, except as provided in [paragraph \(c\)\(4\)](#) of this section, the Secretary may initiate an appropriate proceeding to collect from the school whose act or omission resulted in the borrower defense the amount of relief arising from the borrower defense, within the later of -

(i) Three years from the end of the last award year in which the student attended the institution; or

(ii) The limitation period that State law would apply to an action by the borrower to recover on the cause of action on which the borrower defense is based.

(4) The Secretary may initiate a proceeding to collect at any time if the institution received notice of the claim before the end of the later of the periods described in [paragraph \(c\)\(3\)](#) of this section. For purposes of this paragraph, notice includes receipt of -

(i) Actual notice from the borrower, from a representative of the borrower, or from the Department;

(ii) A class action complaint asserting relief for a class that may include the borrower; and

(iii) Written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower.

(d) ***Borrower defense to repayment for loans first disbursed on or after July 1, 2017, and before July 1, 2020.*** For borrower defense to repayment for loans first disbursed on or after July 1, 2017, and before July 1, 2020, a borrower asserts and the Secretary considers a borrower defense in accordance with [§ 685.222](#).

(e) ***Borrower defense to repayment for loans first disbursed on or after July 1, 2020.*** This paragraph (e) applies to borrower defense to repayment for loans first disbursed on or after July 1, 2020.

(1) ***Definitions.*** For the purposes of this paragraph (e), the following definitions apply:

(i) A “Direct Loan” means a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan.

(ii) “Borrower” means

(A) The borrower; and

(B) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(iii) A “borrower defense to repayment” includes -

(A) A defense to repayment of amounts owed to the Secretary on a Direct Loan, or a Direct Consolidation Loan that was used to repay a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the [Public Health Service Act](#), Health Education Assistance Loan, or Nursing Loan made under part E of the [Public Health Service Act](#); and

(B) Any accompanying request for reimbursement of payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan.

(iv) The term “provision of educational services” refers to the educational resources provided by the institution that are required by an accreditation agency or a State licensing or authorizing agency for the completion of the student's educational program.

(v) The terms “school” and “institution” may be used interchangeably and include an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services.

(2) Federal standard for loans first disbursed on or after July 1, 2020. For a Direct Loan or Direct Consolidation Loan first disbursed on or after July 1, 2020, a borrower may assert a defense to repayment under this paragraph (e), if the borrower establishes by a preponderance of the evidence that -

(i) The institution at which the borrower enrolled made a misrepresentation, as defined in § 685.206(e)(3), of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan, and that directly and clearly relates to:

(A) Enrollment or continuing enrollment at the institution or

(B) The provision of educational services for which the loan was made; and

(ii) The borrower was financially harmed by the misrepresentation.

(3) Misrepresentation. A “misrepresentation,” for purposes of this paragraph (e), is a statement, act, or omission by an eligible school to a borrower that is false, misleading, or deceptive; that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth; and that directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made. Evidence that a misrepresentation defined in this paragraph (e) may have occurred includes, but is not limited to:

(i) Actual licensure passage rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(ii) Actual employment rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(iii) Actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that are materially different from those included in the institution's marketing materials, website, or other communications made to the student or provided by the institution to national ranking organizations;

(iv) The inclusion in the institution's marketing materials, website, or other communication made to the student of specialized, programmatic, or institutional certifications, accreditation, or approvals not actually obtained, or the failure to remove within a reasonable period of time such certifications or approvals from marketing materials, website, or other communication when revoked or withdrawn;

(v) The inclusion in the institution's marketing materials, website, or other communication made to the student of representations regarding the widespread or general transferability of credits that are only transferrable to limited types of programs or institutions or the transferability of credits to a specific program or institution when no reciprocal agreement exists with another institution or such agreement is materially different than what was represented;

(vi) A representation regarding the employability or specific earnings of graduates without an agreement between the institution and another entity for such employment or sufficient evidence of past employment or earnings to justify such a representation or without citing appropriate national, State, or regional data for earnings in the same field as provided by an appropriate Federal agency that provides such data. (In the event that national data are used, institutions should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for recent graduates.);

(vii) A representation regarding the availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution that is materially different in availability, amount, or nature from the actual financial assistance available to the borrower from the institution or any other entity to pay the costs of attendance at the institution after enrollment;

(viii) A representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student;

(ix) A representation that the institution, its courses, or programs are endorsed by vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, governmental officials, Federal or State agencies, the United States Armed Forces, or other individuals or entities when the institution has no permission or is not otherwise authorized to make or use such an endorsement;

(x) A representation regarding the educational resources provided by the institution that are required for the completion of the student's educational program that are materially different from the institution's actual circumstances at the time the representation is made, such as representations regarding the institution's size; location; facilities; training equipment; or the number, availability, or qualifications of its personnel; and

(xi) A representation regarding the nature or extent of prerequisites for enrollment in a course or program offered by the institution that are materially different from the institution's actual circumstances at the time the representation is made, or that the institution knows will be materially different during the student's anticipated enrollment at the institution.

(4) *Financial harm.* Financial harm is the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation, as defined in [§ 685.206\(e\)\(3\)](#). Financial harm does not include damages for nonmonetary loss, such as personal injury, inconvenience, aggravation, emotional distress, pain and suffering, punitive damages, or opportunity costs. The Department does not consider the act of taking out a Direct Loan or a loan repaid by a Direct Consolidation Loan, alone, as evidence of financial harm to the borrower. Financial harm is such monetary loss that is not predominantly due to intervening local, regional, or national economic or labor market conditions as demonstrated by evidence before the Secretary or provided to the Secretary by the borrower or the school. Financial harm cannot arise from the borrower's voluntary decision to pursue less than full-time work or not to work or result from a voluntary change in occupation. Evidence of financial harm may include, but is not limited to, the following circumstances:

(i) Periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions;

(ii) A significant difference between the amount or nature of the tuition and fees that the institution represented to the borrower that the institution would charge or was charging and the actual amount or nature of the tuition and fees charged by the institution for which the Direct Loan was disbursed or for which a loan repaid by the Direct Consolidation Loan was disbursed;

(iii) The borrower's inability to secure employment in the field of study for which the institution expressly guaranteed employment; and

(iv) The borrower's inability to complete the program because the institution no longer offers a requirement necessary for completion of the program in which the borrower enrolled and the institution did not provide for an acceptable alternative requirement to enable completion of the program.

(5) *Exclusions.* The Secretary will not accept the following as a basis for a borrower defense to repayment -

(i) A violation by the institution of a requirement of the Act or the Department's regulations for a borrower defense to repayment under paragraph (c) or (d) of this section or under [§ 685.222](#), unless the violation would otherwise constitute the basis for a successful borrower defense to repayment under this paragraph (e); or

(ii) A claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made, including, but not limited to -

(A) Personal injury;

(B) Sexual harassment;

(C) A violation of civil rights;

(D) Slander or defamation;

(E) Property damage;

(F) The general quality of the student's education or the reasonableness of an educator's conduct in providing educational services;

(G) Informal communication from other students;

(H) Academic disputes and disciplinary matters; and

(I) Breach of contract, unless the school's act or omission would otherwise constitute the basis for a successful defense to repayment under this paragraph (e).

(6) Limitations period and tolling of the limitations period for arbitration proceedings.

(i) A borrower must assert a defense to repayment under this paragraph (e) within three years from the date the student is no longer enrolled at the institution. A borrower may only assert a defense to repayment under this paragraph (e) within the timeframes set forth in [§ 685.206\(e\)\(6\)\(i\) and \(ii\)](#) and (e)(7).

(ii) For pre-dispute arbitration agreements, as defined in [§ 668.41\(h\)\(2\)\(iii\)](#), the limitations period will be tolled for the time period beginning on the date that a written request for arbitration is filed, by either the student or the institution, and concluding on the date the arbitrator submits, in writing, a final decision, final award, or other final determination, to the parties.

(7) Extension of limitation periods and reopening of applications. For loans first disbursed on or after July 1, 2020, the Secretary may extend the time period when a borrower may assert a defense to repayment under [§ 685.206\(e\)\(6\)](#) or may reopen a borrower's defense to repayment application to consider evidence that was not previously considered only if there is:

(i) A final, non-default judgment on the merits by a State or Federal Court that has not been appealed or that is not subject to further appeal and that establishes the institution made a misrepresentation, as defined in [§ 685.206\(e\)\(3\)](#); or

(ii) A final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in [§ 685.206\(e\)\(3\)](#).

(8) Application and Forbearance. To assert a defense to repayment under this paragraph (e), a borrower must submit an application under penalty of perjury on a form approved by the Secretary and sign a waiver permitting the institution to provide the Department with items from the borrower's education record relevant to the defense to repayment claim. The form will note that pursuant to paragraph (b)(6)(i) of this section, if the borrower is not in default on the loan for which a borrower defense has been asserted, the Secretary will grant forbearance and notify the borrower of the option to decline forbearance. The application requires the borrower to -

(i) Certify that the borrower received the proceeds of a loan, in whole or in part, to attend the named institution;

(ii) Provide evidence that supports the borrower defense to repayment application;

(iii) State whether the borrower has made a claim with any other third party, such as the holder of a performance bond, a public fund, or a tuition recovery program, based on the same act or omission of the institution on which the borrower defense to repayment is based;

(iv) State the amount of any payment received by the borrower or credited to the borrower's loan obligation through the third party, in connection with a borrower defense to repayment described in [paragraph \(e\)\(2\)](#) of this section;

(v) State the financial harm, as defined in [paragraph \(e\)\(4\)](#) of this section, that the borrower alleges to have been caused and provide any information relevant to assessing whether the borrower incurred financial harm, including providing documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower if the borrower is a recent graduate (failure to provide such information results in a presumption that the borrower failed to actively pursue employment

in the field); whether the borrower was terminated or removed for performance reasons from a position in the field for which the borrower's education prepared the borrower, or in a related field; and whether the borrower failed to meet other requirements of or qualifications for employment in such field for reasons unrelated to the school's misrepresentation underlying the borrower defense to repayment, such as the borrower's ability to pass a drug test, satisfy driving record requirements, and meet any health qualifications; and

(vi) State that the borrower understands that in the event that the borrower receives a 100 percent discharge of the balance of the loan for which the defense to repayment application has been submitted, the institution may, if allowed or not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan.

(9) Consideration of order of objections and of evidence in possession of the Secretary.

(i) If the borrower asserts both a borrower defense to repayment and any other objection to an action of the Secretary with regard to a Direct Loan or a loan repaid by a Direct Consolidation Loan, the order in which the Secretary will consider objections, including a borrower defense to repayment, will be determined as appropriate under the circumstances.

(ii) With respect to the borrower defense to repayment application submitted under this paragraph (e), the Secretary may consider evidence otherwise in the possession of the Secretary, including from the Department's internal records or other relevant evidence obtained by the Secretary, as practicable, provided that the Secretary permits the institution and the borrower to review and respond to this evidence and to submit additional evidence.

(10) School response and borrower reply.

(i) Upon receipt of a borrower defense to repayment application under this paragraph (e), the Department will notify the school of the pending application and provide a copy of the borrower's request and any supporting documents, a copy of any evidence otherwise in the possession of the Secretary, and a waiver signed by the student permitting the institution to provide the Department with items from the student's education record relevant to the defense to repayment claim to the school, and invite the school to respond and to submit evidence, within the specified timeframe included in the notice, which shall be no less than 60 days.

(ii) Upon receipt of the school's response, the Department will provide the borrower a copy of the school's submission as well as any evidence otherwise in possession of the Secretary, which was provided to the school, and will give the borrower an opportunity to submit a reply within a specified timeframe, which shall be no less than 60 days. The borrower's reply must be limited to issues and evidence raised in the school's submission and any evidence otherwise in the possession of the Secretary.

(iii) The Department will provide the school a copy of the borrower's reply.

(iv) There will be no other submissions by the borrower or the school to the Secretary, unless the Secretary requests further clarifying information.

(11) Written decision.

(i) After considering the borrower's application and all applicable evidence, the Secretary issues a written decision -

(A) Notifying the borrower and the school of the decision on the borrower defense to repayment;

(B) Providing the reasons for the decision; and

(C) Informing the borrower and the school of the relief, if any, that the borrower will receive, consistent with [paragraph \(e\)\(12\)](#) of this section, and specifying the relief determination.

(ii) If the Department receives a borrower defense to repayment application that is incomplete and is within the limitations period in § 685.206(e)(6) or (7), the Department will not issue a written decision on the application and instead will notify the borrower in writing that the application is incomplete and will return the application to the borrower.

(12) Borrower defense to repayment relief.

(i) If the Secretary grants the borrower's request for relief based on a borrower defense to repayment under this paragraph (e), the Secretary notifies the borrower and the school that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay or will be reimbursed for amounts paid toward the loan voluntarily or through enforced collection. The amount of relief that a borrower receives may exceed the amount of financial harm, as defined in § 685.206(e)(4), that the borrower alleges in the application pursuant to § 685.206(e)(8)(v). The Secretary determines the amount of relief and awards relief limited to the monetary loss that a borrower incurred as a consequence of a misrepresentation, as defined in § 685.206(e)(3). The amount of relief cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense to repayment. In awarding relief, the Secretary considers the borrower's application, as described in § 685.206(e)(8), which includes information about any payments received by the borrower and the financial harm alleged by the borrower. In awarding relief, the Secretary also considers the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, which was previously provided to the borrower and the school, as described in § 685.206(e)(10). The Secretary also updates reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan.

(ii) The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include one or both of the following, if applicable:

(A) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act and

(B) Eliminating or recalculating the subsidized usage period that is associated with the loan or loans discharged pursuant to § 685.200(f)(4)(iii).

(13) Finality of borrower defense to repayment decisions. The determination of a borrower's defense to repayment by the Department included in the written decision referenced in paragraph (e)(11) of this section is the final decision of the Department and is not subject to appeal within the Department.

(14) Cooperation by the borrower. The Secretary may revoke any relief granted to a borrower under this section who refuses to cooperate with the Secretary in any proceeding under paragraph (e) of this section or under 34 CFR part 668, subpart G. Such cooperation includes, but is not limited to -

(i) Providing testimony regarding any representation made by the borrower to support a successful borrower defense to repayment; and

(ii) Producing, within timeframes established by the Secretary, any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(15) Transfer to the Secretary of the borrower's right of recovery against third parties.

(i) Upon the grant of any relief under this paragraph (e), the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the provision of educational services for which the loan was received, against the school, its principals, its affiliates and their successors, or its sureties, and any private fund, including the portion of a public fund that represents funds received

from a private party. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense to repayment and for the same loan for which the discharge was granted under this section.

(ii) The provisions of this paragraph (e)(15) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this paragraph (e)(15) limits or forecloses the borrower's right to pursue legal and equitable relief arising under applicable law against a party described in this paragraph (e)(15) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(16) *Recovery from the school.*

(i) The Secretary may initiate an appropriate proceeding to require the school whose misrepresentation resulted in the borrower's successful borrower defense to repayment under this paragraph (e) to pay to the Secretary the amount of the loan to which the defense applies in accordance with [34 CFR part 668](#), subpart G. This paragraph (e)(16) would also be applicable for provisionally certified institutions.

(ii) The Secretary will not initiate such a proceeding more than five years after the date of the final determination included in the written decision referenced in [paragraph \(e\)\(11\)](#) of this section. The Department will notify the school of the borrower defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application.

(Approved by the Office of Management and Budget under control number 1845-0021)

[[59 FR 61690](#), Dec. 1, 1994, as amended at [60 FR 33345](#), June 28, 1995; [64 FR 58972](#), Nov. 1, 1999; [78 FR 65832](#), Nov. 1, 2013; [81 FR 76080](#), Nov. 1, 2016; [84 FR 49926](#), Sept. 23, 2019]

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