

Attachment 2

FFEL PROGRAM

(I) LOAN HOLDER PROCEDURES

FFEL loan holders must use the following procedures in processing total and permanent disability discharge requests. If the guaranty agency is the loan holder, the disability discharge request is submitted by the borrower directly to the guaranty agency. For these loans, the guaranty agency is responsible for sending the notices described in Sections (I) B.1 and (I) B.2 of this Attachment to the borrower.

A. Review Process

Under the total and permanent disability discharge procedures, an FFEL loan holder is expected to conduct rigorous reviews of disability discharge requests. If the physician's certification is not received or the holder determines that the borrower is not totally and permanently disabled, the loan holder must resume collection activities that were suspended because it was evaluating the borrower's application or awaiting the physician's certification. Otherwise collection activities remain suspended by the loan holder and guaranty agency throughout the loan holder claim payment process and the guaranty agency's assignment of the loan to the Department [34 C.F.R. §682.402(c)(4)].

B. Filing a Claim

If the FFEL holder makes a preliminary determination that the borrower meets the criteria for a total and permanent disability discharge based on the certified discharge form and any supporting documentation, it must file a claim with the guaranty agency within 60 days after making that determination [34 C.F.R. §682.402(c)(4)]. If the guaranty agency denies the claim, it must notify the loan holder of the reason for the denial. Depending on the outcome of the guaranty agency's review, the loan holder must take one of the following actions:

1. If the claim is denied, the loan holder must promptly notify the borrower and explain why the claim has been denied. The loan holder must inform the borrower that it will resume collection activities and that it may capitalize accrued interest that was not paid while collection efforts were suspended [34 C.F.R. §682.402(c)(5) and (c)(7)].
2. If the claim is paid, the loan holder must notify the borrower that the guaranty agency has made a preliminary determination that the borrower meets the eligibility criteria for a disability discharge. The notification should inform the borrower that the loan will be assigned to the Department of Education for a review of the request and an initial determination of eligibility for the discharge [34 C.F.R. §682.402(c)(8)]. If the Department determines that the borrower is not eligible, the Department will notify the borrower and begin collection activity on the loan [34 C.F.R. §682.402(c)(12)]. If the Department makes an initial determination that the borrower meets the criteria for a disability discharge, the Department will place the loan in a conditional discharge status, for three years from the date the borrower became totally and permanently disabled, as certified by a physician. During the conditional discharge period, interest will not accrue on the loan for which the discharge is sought and the borrower is not obligated to make payments on the loan. If, throughout the conditional discharge period, the borrower remains eligible for the discharge (does not take out any additional Title IV loans and does not have annual earnings from work in excess of the poverty level for a family of two) the Department will grant the borrower a final discharge.

The loan holder's notification to the borrower should explain these procedures for reviewing disability discharge, and inform the borrower that the Department will be requesting information on the borrower's income from employment during the conditional discharge period [34 C.F.R. §§682.402(c)(13) – (c)(15)].

C. Payments Received After A Claim Has Been Paid

If an FFEL holder receives any payment from or on behalf of the borrower after the guaranty agency has paid the claim, the loan holder must forward that payment to the guaranty agency. At the time the loan holder forwards the payment to the guaranty agency, the loan holder must notify the borrower or other party who sent the payment that there is no obligation to make further payments, unless the Department directs the borrower otherwise [34 C.F.R. §682.402(c)(9)].

(II) GUARANTY AGENCY PROCEDURES

Guaranty agencies may receive disability applications in claim packages filed by loan holders, or directly from borrowers whose loans are already held by the agency. In the latter case, the agency must suspend any collection activities on the loan, such as administrative wage garnishment or litigation, while it is evaluating the borrower's application. The agency must also inactivate the loan from the Treasury Offset Program on the weekly update tape.

A. Review Process

If a borrower who has filed an application for a disability discharge also has previously filed a closed school or false certification discharge request that is being reviewed by the guaranty agency, the agency should conclude that review, to the extent that it covers the same loans for which the disability discharge has been requested, before it undertakes consideration of the disability discharge request. A guaranty agency should continue its review of a borrower's discharge request on any loan for which a judgment has been secured or on which a bankruptcy filing has taken place and assign the loan to the Department, as appropriate.

When the guaranty agency receives a borrower's application for a disability discharge, it must review the application as it has done in the past to ensure that the application is complete and that the condition certified by the physician meets the standard for discharge, and that no supporting documentation or other information of which the agency is aware conflicts with the physician's certification. If the guaranty agency questions the physician's certification for any reason, the Department expects the guaranty agency to contact the physician to obtain clarification and to resolve the apparent conflict [34 C.F.R. §682.402(c)(6)].

If the guaranty agency makes a preliminary determination that the borrower meets the criteria for a total and permanent disability discharge, it assigns the loan to the Department by following the assignment process outlined in Section (II) D of this Attachment [34 C.F.R. §682.402(c)(11)].

Extended time period for reviewing loan holder claims: Under current regulations, a guaranty agency has 45 days to pay or return a disability claim submitted by a loan holder. As of the date of this letter, a proposal to increase this time period to 90 days is being considered. The Department will publish a Notice of Proposed Rulemaking proposing this change later this year. Because we believe it is important to allow guaranty agencies more time to rigorously scrutinize disability claims, we will not hold a guaranty agency liable for not meeting the current 45 day requirement if it pays or returns a disability claim filed by a loan holder within 90 days.

B. Denying or Approving a Claim

Depending on the outcome of its review of a claim submitted by an FFEL holder, the guaranty agency will take one of the following actions:

1. If the claim is denied, the agency must return the claim package to the loan holder and explain why it has denied the claim [34 C.F.R. §682.402(c)(7)].
2. If the agency makes a preliminary determination that the borrower meets the criteria for a disability discharge, it must pay the FFEL holder's claim and assign the loan to the Department [34 C.F.R. §682.402(c)(6) and (c)(11)].

C. Requesting Reimbursement

The new disability rules have no effect on the way that guaranty agencies request reimbursement for disability claims paid to loan holders. Guaranty agencies should continue to follow the normal procedures for requesting reimbursement from the Department.

D. Assignment

After paying a loan holder's disability claim and receiving the reimbursement payment the guaranty agency assigns the loan to the Department. When assigning a loan, the agency must:

1. Use the current electronic and hard copy file formats and provide all data normally associated with loan subrogation.
2. Include the appropriate assignment letter and tape transmittal form, identifying the assignment as a "disability assignment."
3. Fill in Tape Positions 427-434 ("Date of Default") with spaces, if the loan is not in default
4. Attach the disability discharge application and any other supporting medical documentation provided by the borrower or obtained by the loan holder or guaranty agency during the review process.
5. Attach the promissory note and any judgment, bankruptcy, or indemnification agreement, as applicable.
6. Include a listing of any payments (amounts and payment date) received on or after the date the borrower became totally and permanently disabled, as certified by the physician in Section 3 of the Total and Permanent Disability Discharge Form. The listing should include payments received from any source, including those made by Treasury Offset.

E. Mailing Address

Total and permanent disability assignment submissions should be sent to the Department at the following address:

Conditional Total and Permanent Disability Assignments
U.S. Department of Education
c/o AFSA Data Corporation
501 Bleecker Street
Utica, New York 13501

F. Credit Bureau Reporting

After assignment to the Department, a guaranty agency should use the Standard Metro formats for reporting these loans to credit bureau organizations, using an “88” code to indicate that a claim has been filed with the Department. Upon notification by the Department that the assignment has been accepted, the agency should delete the loan record using the “DA” reporting code.

After the loan has been assigned, the Department will be responsible for further credit bureau reporting on the loan (see Attachment 3, Section (III) A.).

G. NSLDS Reporting

After receipt of a disability reimbursement payment and after verifying that the loan had previously been reported to NSLDS, the guaranty agency should continue the current practice of reporting the loan to NSLDS as “DI” or “DS” with a \$0 balance. The date of discharge reported by the guaranty agency as part of the NSLDS reporting transaction will determine how the Department reports these accounts to NSLDS following assignment. If the date of discharge is after July 1, 2002, the Department will replace the \$0 balance with the outstanding loan amount. As under the current assignment process, when a guaranty agency assigns a loan to the Department, the guaranty agency reports to NSLDS a code number for the entity that will receive the loan. These loans will be assigned to a newly established Disability Discharge Operating Unit. An entity code for this unit has not yet been designated. We will advise guaranty agencies of the new entity code as soon as it is available.

After the loan has been assigned, the Department will be responsible for further NSLDS reporting on the loan (see Attachment 3, Section (III) B.).

H. Payments Received After Assignment

If the guaranty agency receives any payment from or on behalf of the borrower after the loan has been assigned it must forward that payment to the Department at the address provided in Section (II) E of this Attachment. The submission should be accompanied by a listing with the borrower's name, social security number, source of payment if known (i.e. borrower, parent, etc), payment amount, payment date and date of assignment to the Department for total and permanent disability discharge purposes. The Department will credit the payment to the borrower's account.

At the time the agency forwards the payment to the Department, the agency must notify the borrower or the sender of the payment that there is no obligation to make further payments while the loan is held by the Department in a conditional discharge status, unless the Department directs the borrower otherwise. If the Department makes a final determination to discharge the loan, it will return to the borrower any payments received on the loan on or after the date the borrower became totally and permanently disabled [34 C.F.R. §§682.402(r)(2) – (r)(3)].

I. Financial Reporting

As stated in Section (II) C of this Attachment, the new disability rules have no effect on the way guaranty agencies request or are paid reimbursement on disability claims paid to loan holders. A certain number of loans assigned to the Department as disability claims, however, may either not be approved by the Department, or may become ineligible for final discharge during the conditional discharge period. Although these loans will not be returned to the guaranty agency

nor will the reimbursement amount change, the Department believes that it may be necessary to adjust guaranty agency financial reports in some manner to reflect the change in status of these claims to ensure consistency between NSLDS and financial reporting records. The Department plans to work with the guaranty agencies in the near future to determine the best way to reflect the changed status of these loans in guaranty agencies financial reports.