| # | Subject | Summary of Change to Common Manual | Type of Update | Effective Date |
|---|---|---|---|---|
| 1287 | Administrative Forbearance under Income-Based Repayment (IBR) | **11.21 Administrative Forbearance**<br>**Figure 11-2**<br><br>Adds information to the Manual about administrative forbearance provisions related to the income-based repayment plan final regulations published in the *Federal Register* on November 1, 2012. | Federal | For administrative forbearances granted under the income-based repayment provisions, on or after July 1, 2013, unless implemented by the lender no earlier than November 1, 2012. |
| 1288 | Revised Total and Permanent Disability Discharge Process | **12.5.A Default Aversion Assistance Request (DAAR)**<br>**13.1.D Claim File Documentation**<br>**13.3 Claim Purchases or Discharge Payment**<br>**13.6.A Default Claims**<br>**13.8.G Total and Permanent Disability**<br><br>Implements new policies to support the new process by which all TPD loan discharge applications are processed by the Department and the Department makes the disability determination. The Department will instruct the lender when to suspend collection activity, when the TPD application is approved, and to either file a claim with the guarantor or return the loan to repayment status, or another status, as appropriate. Also requires the lender to notify the guarantor to cancel any DAAR and DAAR activities on a loan for which the borrower plan to apply for, or has applied for, a TPD loan discharge. | Federal | Total and permanent disability (TPD) discharge applications received by the loan holder on or after July 1, 2013.<br><br>Notification that the borrower claims to be totally and permanently disabled received by the loan holder on or after July 1, 2013.<br><br>TPD notifications from the Department received by the loan holder on or after July 1, 2013. |
| 1289 | HEROES Waivers Updates | **H.4.B HEROES Act Waivers**<br>**Figure H-2**<br><br>Extends the HEROES waivers to September 30, 2017. Also eliminates the waivers applicable to the armed forces deferment and implements waivers of the annual documentation requirement for affected individuals who are repaying FFELP loans under an income-based repayment plan.<br><br>Requires the lender to maintain for three years, plus a three-month transition period, the payment amount applicable under the most recent PFH calculation when the borrower is unable to provide updated income and family size documentation due to his or her status as an affected individual.<br><br>Removes the requirement that a school eliminate from its calculation of the amount of funds it returns as “unearned funds”, the amount of any charges that the school is required to cover, and has covered, with non-Title IV sources of aid. | Federal | September 27, 2012. |

# *COMMON MANUAL* - FEDERAL POLICY PROPOSAL

**Date:** May 16, 2013

| | | | |
|---|---|---|---|
| | DRAFT | Comments Due | |
| | FINAL | Consider at GB meeting | |
| X | APPROVED | with changes | May 16 |

**SUBJECT:** **Administrative Forbearance under Income-Based Repayment (IBR)**

**AFFECTED SECTIONS:** **11.21 Administrative Forbearance**
**Figure 11-2**

**POLICY INFORMATION:** **1287/Batch 195**

**EFFECTIVE DATE/TRIGGER EVENT:** For administrative forbearances granted under the income-based repayment provisions, on or after July 1, 2013, unless implemented by the lender no earlier than November 1, 2012.

**BASIS:**
§682.211(f)(16); §682.215(e)(9); §685.221(e)(9).

**CURRENT POLICY:**
Current policy provides information about circumstances regarding when a lender may process an administrative forbearance to resolve an outstanding delinquency.

**REVISED POLICY:**
Revised policy adds information to the Manual about administrative forbearance provisions related to the income-based repayment plan final regulations published in the *Federal Register* on November 1, 2012.

**REASON FOR CHANGE:**
This change is necessary to comply with the final regulations published by the Department in the *Federal Register* dated November 1, 2012.

**PROPOSED LANGUAGE - *COMMON MANUAL*:**
Revise Figure 11-2, page 32, by adding a new 3rd row under Administrative, as follows:

| **Administrative** | |
|---|---|
| Borrower Ineligible for Deferment[6] | Beginning date to ending date of the ineligible deferment |
| Delinquency before a Deferment or Certain Forbearances[6] | First date of overdue payment to the day before the beginning date of deferment or other forbearance type |
| <u>Delinquency under Income-Based Repayment (IBR)[6]</u> | <u>First date of overdue payment to the date the new calculated monthly payment amount is determined</u> |

Revise Section 11.21, page 36, column 1, by adding a new subsection after Subsection 11.21.H, and renumbering subsequent subsections, as follows:

**11.21.I**
**<u>Delinquency under Income-Based Repayment (IBR)</u>**

<u>If the lender received the borrower's income information more than 10 days after the specified annual deadline and the borrower's monthly payment amount is recalculated to the permanent-standard amount, the lender may grant an administrative forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined only if the new income-based monthly payment amount is zero or is less than the borrower's previously calculated income-based monthly payment amount. The lender may not capitalize interest that accrues during the portion of this administrative forbearance period that covers payments due after the end of the prior annual payment period. (See Subsection 10.8.D for information on income-based repayment plans.)</u>

[§682.211(f)(16); §682.215(e)(9); §685.221(e)(9)]

**~~11.21.I~~ 11.21.J**
**Documentation Collection and Processing**

. . .

**~~11.21.J~~ 11.21.K**
**Forgiveness under Income-Based Repayment (IBR)**

. . .

**~~11.21.K~~ 11.21.L**
**Late Notification of Out-of-School Dates**

. . .

**~~11.21.L~~ 11.21.M**
**Loan Sale or Transfer**

. . .

**~~11.21.M~~ 11.21.N**
**Natural Disasters, Local or National Emergency, or Military Mobilization**

. . .

**~~11.21.N~~ 11.21.O**
**New Out-of-School Dates after Conversion to Repayment**

. . .

**~~11.21.O~~ 11.21.P**
**Repayment Alignment**

. . .

**~~11.21.P~~ 11.21.Q**
**Repurchase of a Non-Bankruptcy Claim**

. . .

**~~11.21.Q~~ 11.21.R**
**Spouses and Parents of Victims of September 11, 2001**

. . .

**~~11.21.R~~ 11.21.S**
**Total and Permanent Disability**

. . .

**~~11.21.S~~ 11.21.T**
**Unpaid Refund Discharge**

. . .

**~~11.21.T~~ 11.21.U**
**Repayment Plan Change**

. . .

**PROPOSED LANGUAGE - COMMON BULLETIN:**

**Administrative Forbearance under Income-Based Repayment (IBR)**

The *Common Manual* has been revised to include a new administrative forbearance that a lender may grant under income-based repayment. The lender may grant this forbearance if all of the following apply:

- The lender received the borrower's income information more than 10 days after the specified annual deadline.
- The borrower's monthly payment amount is recalculated to the permanent-standard amount.
- The new income-based monthly payment amount is zero or is less than the borrower's previously calculated income-based monthly payment amount.

When permitted, the lender may grant an administrative forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined. The lender may not capitalize interest that accrues during the portion of this administrative forbearance period that covers payments due after the end of the prior annual payment period.

**GUARANTOR COMMENTS:**

None.

**IMPLICATIONS:**

*Student/Borrower:*

A borrower may benefit by the lender granting an administrative forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined if the new income-based monthly payment amount is zero or is less than the borrower's previously calculated income-based monthly payment amount in cases where the lender received the borrower's income information more than 10 days after the specified annual deadline.

*School*:

None.

*Lender/Servicer:*

A lender may need to revise income-based repayment processes and procedures.

*Guarantor:*

A guarantor may need to update its program review procedures.

*U.S. Department of Education*:

The Department may need to update its income-based repayment processes and procedures as well as its program review procedures.

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**To be completed by the Policy Committee**

**POLICY CHANGE PROPOSED BY:**

CM Policy Committee

**DATE SUBMITTED TO CM POLICY COMMITTEE:**

January 8, 2013

**DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:**

May 9, 2013

**PROPOSAL DISTRIBUTED TO:**

CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

**Comments Received From:**

AES/PHEAA, ASA, College Assist, FAME, Great Lakes, MGA, NASFAA, NCHER TPD Workgroup & Program Regulations Committee, NELA, PPSV, SCSL, SLSA, TG, TSAC, UHEAA, and USA Funds.

**Responses to Comments**

Most of the commenters supported this proposal as written. Several commenters recommended wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

**COMMENT:**

One commenter suggested a revision to the effective date trigger event to include the words “on or after” before July 1, 2013.

**Response:**

The Committee agrees.

**Change:**

The effective date trigger event has been changed, as follows:

> “For administrative forbearances granted under the income-based repayment provisions, on or after July 1, 2013, unless implemented by the lender no earlier than November 1, 2012.”

**COMMENT:**

One commenter requested revisions to Section 11.21, as follows:

> “If the lender receives the borrower’s information more than 10 days after the specified annual deadline and the borrower’s monthly payment amount is recalculated to the permanent-standard amount, the lender may grant forbearance with respect to payments that are overdue or would be due at the time the new calculated income-based monthly payment amount is determined only ~~If~~ if the new income-based monthly payment amount is zero or is less than the borrower’s previously calculated income-based monthly payment amount. The lender may not capitalize interest that accrues during the portion of this administrative forbearance period that covers payments ~~that are overdue~~ due after the end of the prior annual payment period ~~is not capitalized~~.
> [§682.211(f)(16); §682.215(e)(9); §685.221(e)(9)]

Several other commenters requested the same or similar changes. The commenters noted that these changes were made for consistency with text added to Subsection 10.8.D by proposal 1284/Batch 192. The suggested changes clarify that the administrative forbearance can only be granted if the loan has been converted to permanent-standard *and* if the new PFH payment amount is $0 or less than the previous PFH payment amount. The proposed changes also clarify that this administrative forbearance period can cover payments that are due or overdue (not necessarily overdue yet) at the time the forbearance is granted.

**Response:**

The Committee agrees.

**Change:**

Section 11.21 has been revised as recommended by the commenters.

ma/edited-chh

# *COMMON MANUAL* – FEDERAL POLICY PROPOSAL

**Date:** May 16, 2013

| | | | |
|---|---|---|---|
| | DRAFT | Comments Due | |
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**SUBJECT:** **Revised Total and Permanent Disability Discharge Process**

**AFFECTED SECTIONS:**
**12.5.A Default Aversion Assistance Request (DAAR)**
**13.1.D Claim File Documentation**
**13.3 Claim Purchase or Discharge Payment**
**13.6.A Default Claims**
**13.8.G Total and Permanent Disability**

**POLICY INFORMATION:** **1288/Batch 195**

**EFFECTIVE DATE/TRIGGER EVENT:** Total and permanent disability (TPD) discharge applications received by the loan holder on or after July 1, 2013.

Notification that the borrower claims to be totally and permanently disabled received by the loan holder on or after July 1, 2013.

TPD notifications from the Department received by the loan holder on or after July 1, 2013.

**BASIS:**
§682.402(c); §682.402(g)(1)(iv).

**CURRENT POLICY:**
Current policy provides guidance to lenders regarding the claim filing requirements based on lender involvement in the process of the TPD review and initial determination.

**REVISED POLICY:**
Revised policy implements new policies to support the new process by which all TPD loan discharge applications are processed by the Department and the Department makes the disability determination. The Department will instruct the lender when to suspend collection activity, when the TPD application is approved, and to either file a claim with the guarantor or return the loan to repayment status, or another status, as appropriate. Revised policy also requires the lender to notify the guarantor to cancel any DAAR and DAAR activities on a loan for which the borrower plans to apply for, or has applied for, a TPD loan discharge.

**REASON FOR CHANGE:**
This change is necessary to comply with the final regulations published in the November 1, 2012, *Federal Register*, Vol. 77, No. 212.

**PROPOSED LANGUAGE - *COMMON MANUAL*:**
Revise Subsection 12.5.A, page 16, column 2, adding a new paragraph following paragraph 2, as follows:

> A guarantor's default aversion assistance ends when the delinquency on the loan has been satisfactorily resolved. The lender must notify the guarantor as soon as the delinquency on the loan is reduced below the default aversion assistance cancellation date−preferably through the regular submission of appropriate guarantor's reports.
>
> Also, if the lender receives information from the Department that the borrower intends to file or has submitted total and permanent disability documentation to the Department, the lender must notify the guarantor to cancel the Default Aversion Assistance Request.

Revise Subsection 13.1.D, page 6, column 1, paragraph 2, as follows:

> *Total and Permanent Disability Claims ~~- Regular~~*
>
> When the Department notifies the lender to file the TPD claim with the guarantor, ~~For a total~~

~~and permanent disability claim,~~ the lender must submit the preceding items *1* through ~~*5*~~*6*, and each of the following:

- ~~A completed Discharge Application: Total and Permanent Disability or other form(s) approved by the Department.~~ A copy of the Department's notification to the lender that the borrower's discharge application has been approved.

- ~~A record of any payments received after the date the physician completed and certified the discharge application.~~

- A FFELP Assignment Support Supplemental Form (TPD-Specific worksheet) when filing a total and permanent disability claim that is not based on a determination by the Department of Veterans Affairs (VA). This form requires the lender to provide certain electronic signature and disbursement information.

[§682.402(g)(1)(iv); the Department's Mandatory Assignment Guidance dated July 2, 2009]

~~*Total and Permanent Disability Claims – VA*~~
~~For a total and permanent disability claim, the lender must submit—in addition to the preceding items *1* through *5*—a Discharge Application: Total and Permanent Disability with Sections 1 and 3 completed by the borrower along with the documentation from the U.S. Department of Veterans Affairs (VA) showing that the VA has determined the borrower to be unemployable due to a service-connected condition.~~
~~[§682.402(c)(8); §685.213(c)(1); DCL GEN-09-07/FP-09-05]~~

Some guarantors have additional or alternate requirements. These requirements are noted in Appendix C.

Revise Section 13.3, page 9, column 1, paragraph 2, as follows:

**13.3**
**Claim Purchase or Discharge Payment**

The guarantor ~~is required to~~ must purchase an approved claim ~~or a Department-approved total and permanent disability – VA discharge request,~~ or return the claim ~~or Department-denied total and permanent disability – VA discharge~~ request to the lender within a specific number of days after receiving the claim ~~or the Department's determination on a total and permanent – VA discharge request~~, as follows:

- 90 days for a default~~, total and permanent disability – regular,~~ false certification, or closed school claim.

- ~~45 days for a total and permanent disability– VA claim.~~

  - ~~The guarantor must, within 45 days after receiving a total and permanent disability – VA claim from the lender, either forward the request to the Department for a final eligibility determination, or return the claim to the lender if the documentation does not establish the discharge eligibility. If the Department approves the discharge, the guarantor must pay the claim to the lender within 45 days after receiving the Department's approval notification. If the Department denies the discharge, the guarantor must return the claim to the lender within 45 days after receiving the Department's denial notification.~~

- 45 days for a total and permanent disability, ~~a~~ bankruptcy ~~claim~~, ~~a~~ death ~~claim~~, ~~or a closed school~~ or an unpaid refund discharge claim.

Revise Subsection 13.6.A, page 14, column 2, paragraph 2, as follows:

**Forwarding Documentation of Other Claim Types**

If, after filing a default claim, the lender receives documentation that the loan(s) may qualify ~~qualifies~~ for a different type of claim payment, the lender must forward the applicable documentation or otherwise notify ~~to~~ the guarantor within 30 days of receipt. The lender must forward any acceptable notification (including all supporting documentation) that demonstrates that one of the following situations has occurred:

- The borrower has died or the student for whom a parent PLUS loan was obtained has died.
- The borrower's disability discharge application has been approved. ~~has become totally and permanently disabled.~~
- The borrower has filed any type of bankruptcy.
- . . .
- . . .
- . . .

The guarantor may alter the original claim type to reflect the new status or may return the claim for additional information, if applicable.

If the lender has filed a claim with the guarantor and receives information from the Department that the borrower intends to file or has submitted total and permanent disability documentation to the Department, the lender must notify the guarantor to cancel the Default Aversion Assistance Request and if a default claim has been filed, and not yet purchased, recall the claim.

Revise Subsection 13.8.G, page 48, column 2, paragraph 1, as follows:

**13.8.G**
**Total and Permanent Disability**

*Note: See Section 5.5 for more information about eligibility requirements that a borrower must meet in order for the borrower to receive a new loan after he or she has received a loan discharge due to total and permanent disability.*

The lender must refer to the Department any borrower or borrower's representative who asserts that the borrower is totally and permanently disabled. The Department will notify the lender if the borrower notifies the Department of their intent to apply for a total and permanent disability and will instruct the lender to suspend collection activity for a period not to exceed 120 days. The Department will also notify the lender if it receives a loan discharge application, and will instruct the lender to suspend collection activities pending their review of the application. The lender must notify the guarantor that the borrower or some party to the loan has applied for total and permanent disability discharge and that the discharge application is under review.
[§682.402(c)(2)(ii) and §682.402(c)(2)(vi)]

A borrower typically is not eligible for discharge of a loan that has already been paid in full when the ~~loan holder~~ Department receives the borrower's total and permanent disability loan discharge ~~request~~ application.

~~*Note:* If a loan is paid in full through involuntary payments within 30 days of a guarantor's receipt of a total and permanent disability loan discharge application, the guarantor, after contacting the Department's Total and Permanent Disability Servicer, may assign the loan to the Department. The Department may discharge some part of the loan balance in such cases.~~

A total and permanent disability discharge request based on a determination by the U.S.

Department of Veterans Affairs (VA) <u>or the Social Security Administration (SSA)</u> has different eligibility criteria than one that is not based on a VA <u>or SSA</u> determination, <u>as applicable,</u> as outlined below.

<u>Note: References to "standard" total and permanent disability in Subsection 13.8 G include both the SSA total and permanent disability determinations and the physician certification determinations.</u>

**Discharge Requests Based on VA Determinations**

<u>If any party to a loan claims to be totally and permanently disabled based on a determination by the Department of Veterans Affairs (VA), the lender must refer that party to the Department to begin the process of applying for loan discharge. An eligible party includes any one of the following:</u>

- <u>A borrower.</u>
- <u>One of two comakers on a PLUS or Consolidation loan.</u>
- <u>An endorser, if the lender is pursuing collection activities against the endorser.</u>

<u>The borrower's, comaker's, or endorser's representative, when authorized to do so, may work with the Department to provide the loan discharge application and copy of the VA documentation.</u>

A borrower is eligible for loan discharge due to total and permanent disability if the borrower provides documentation from the VA showing that the VA has determined the borrower to be unemployable due to a service-connected condition, and this documentation is acceptable to the U.S. Department of Education (the Department). The borrower is not required to provide additional documentation to support the discharge; however, the borrower is required to complete Sections 1 and 3 of the Discharge Application: Total and Permanent Disability. ~~If the lender believes the borrower qualifies for discharge based on its review of the VA disability documentation, the lender must forward the loan discharge application and VA documentation to the guarantor for review.~~

~~If the guarantor determines that the borrower meets the criteria for discharge based on its review of the VA documentation, the guarantor must forward the VA documentation and the loan discharge application to the Department for determination of the borrower's eligibility for loan discharge. If the guarantor determines, based on its review of the VA documentation, that the borrower is not eligible for discharge, the guarantor will return the loan discharge application and VA documentation to the lender with an explanation of the reason for the denial.~~

~~If either the lender or the guarantor determines that the documentation from the VA does not indicate that the borrower is eligible for discharge, the lender must notify the borrower that the discharge request has been denied, provide the reason for the denial, and advise the borrower that collection activities will resume. The lender also must inform the borrower that he or she may reapply for a regular total and permanent disability discharge if the documentation from the VA indicates that the veteran may qualify under regular disability provisions. The lender may treat the loan as if it was in forbearance during the evaluation process, and capitalize the interest.~~

If the Department ~~grants a final~~ <u>approves the disability</u> discharge <u>application</u> based on a VA determination, it will notify the ~~guarantor~~ <u>borrower's loan holder(s)</u> of the discharge. <u>The Department also will notify each lender to file a claim with the guarantor.</u> ~~The guarantor will pay the disability claim and notify the lender. The lender will return any loan payments made on or after the effective date of the VA determination (that the borrower is unemployable due to a service-connected condition).~~ The borrower is not subject to the 3-year conditional period or post-discharge monitoring period. ~~Title IV loans received prior to the effective date of the VA determination, including the underlying loans in a Consolidation loan, are eligible for~~

~~discharge, as well as Title IV loans received on or after the effective date of the VA determination.~~
[§682.402(c)(~~8~~9); §685.213(c)(2); DCL GEN-09-07/FP-09-05; Discharge Application: Total and Permanent Disability]

**Discharge Requests Based on SSA Determinations**

If any party to a loan claims to be totally and permanently disabled based on a determination by the Social Security Administration (SSA), the lender must refer that party to the Department to begin the process of applying for loan discharge. An eligible party includes any one of the following:

- A borrower.
- One of two comakers on a PLUS or Consolidation loan.
- An endorser, if the lender is pursuing collection activities against the endorser.

The borrower's, comaker's, or endorser's representative, when authorized to do so, may work with the Department to provide the loan discharge application and copy of the SSA documentation.

A borrower is eligible for loan discharge due to total and permanent disability if the borrower provides documentation from the SSA that includes a notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. The letter must include a statement that the borrower's next scheduled disability review will occur within 5 to 7 years. The borrower is not required to provide additional documentation to support the discharge; however, the borrower is required to complete Sections 1 and 3 of the Discharge Application: Total and Permanent Disability.
[§682.402(c)(2)(iv)(B)]

**Discharge Requests Based on ~~Regular Determinations~~ Physician Certification**

If any party to a loan claims to be totally and permanently disabled, the lender must refer that party to the Department to begin the process of applying for loan discharge. ~~request that party to provide certification of the disability from a physician who is a doctor of medicine or osteopathy and is legally authorized to practice in a state.~~ An eligible party includes any one of the following:

- A borrower.
- One of two comakers on a PLUS or Consolidation loan.
- An endorser, if the lender is pursuing collection activities against the endorser.

The borrower's, comaker's, or endorser's representative, when authorized to do so, may work with the Department to provide the ~~physician's certification~~ loan discharge application ~~if the borrower, comaker, or endorser is unable to do so~~.

In general, t~~T~~he borrower, comaker, or endorser, or his or her representative, must submit to the Department a completed Discharge Application: Total and Permanent Disability or other form(s) approved by the Department. The physician's certification must state that the borrower, comaker, or endorser is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that meets any one of the following criteria:

- Can be expected to result in death.
- Has lasted for a continuous period of not less than 60 months.

- Is expected to last for a continuous period of not less than 60 months.

The borrower must submit the certification to the Department ~~lender~~ within 90 days of the date that the physician completed and certified the discharge application. ~~If the borrower submits the discharge application after this 90-day time frame, the borrower must have the physician complete a new application and must submit the new application to the lender within 90 days of the physician's new certification.~~
[§682.200(b); §682.402(c)(2)(iv)-(v); §685.213(b)(1); *Federal Register* dated July 23, 2009, p. 36559]

*Suspending Collection*

If a borrower, comaker, or endorser, as applicable, contacts the Department regarding a total and permanent disability (TPD) loan discharge, the Department will notify the lender and provide ~~receives information~~ instructions to ~~indicating that a borrower or one of two comakers on a PLUS or Consolidation loan has become totally and permanently disabled, the lender must continue~~ suspend collection activities for 120 days ~~until it receives the physician's certification—or until it receives a written request from the physician requesting additional time to determine whether the borrower or comaker is totally and permanently disabled. If the lender receives reliable information indicating that an endorser has become totally and permanently disabled, the lender may not apply an administrative forbearance to the PLUS loan~~. If the borrower fails to submit the TPD loan discharge application to the Department, the lender must resume collection on the loan(s) and may capitalize interest accrued during the 120-day period.

If the borrower, comaker, or endorser submits the TPD loan discharge application and necessary documents, the Department will notify the lender to suspend collections while the Department reviews the application.
[§682.402(c)(~~5~~2)(viii)]

~~If the lender receives a written request from the borrower's or comaker's physician requesting additional time to make a determination, the lender must suspend collection activity on the loan for up to 60 days or until the certification is received, whichever is earlier. If the lender determines that the borrower or comaker does not meet the definition of totally and permanently disabled, or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's written request for additional time, the lender must resume collection activity and treat the loan as though forbearance had been granted during this period. A signed forbearance agreement is not required for this administrative forbearance period. The delinquency status, if any, that existed on the loan before the lender suspended its due diligence remains. The lender must resume due diligence immediately at the level of delinquency at which it was suspended. For more information on the use of administrative forbearance in conjunction with the lender's receipt of a physician's written request for additional time, see Subsection 11.21.R.~~
~~[§682.402(c)(5)]~~

. . .

For a comade PLUS loan on which one comaker is applying for loan discharge, the lender must continue to collect on the full balance of the loan from the non-disabled comaker. The lender must ensure that the loan status does not deteriorate during the conditional discharge period, and should work with the non-disabled comaker to discuss deferment options or to negotiate forbearance terms. The lender may apply an administrative forbearance to the entire loan balance if the non-disabled comaker is not eligible for other repayment options or does not choose to defer or forbear the loan. The administrative forbearance may be applied only for the time period that the nondisabled comaker is solely responsible for the loan's repayment and may not begin earlier than the date the loan holder receives ~~the disabled comaker's loan discharge application, or the~~ notification ~~from the guarantor~~ that a loan discharge application was submitted to the Department ~~guarantor, whichever is earlier~~. The administrative forbearance may not end later than the date the lender receives notification of the final discharge determination.

*General Requirements for Total and Permanent Disability Loan Discharge Based on a Physician Certification*

If a doctor of medicine or osteopathy, legally authorized to practice in a state, certifies that the borrower, the comaker, or the endorser on a PLUS loan is totally and permanently disabled . . .

. . .

. . .

If a borrower, comaker, or endorser receives a new TEACH grant or a new Title IV loan (with the exception of a Consolidation loan that does not include any loans that are in a conditional discharge status or post-discharge monitoring period) during the 3-year conditional discharge period or the 3-year post-discharge monitoring period, as applicable, the borrower, comaker, or endorser is not eligible for discharge on the loan on which he or she is a signatory or any loan made prior to that date. (See explanations of the terms “conditional discharge status” and “post-discharge monitoring period” later in this subsection under the subheading “Discharge Based on a Determination of Total and Permanent Disability.”)

~~The lender must review its records for any new loan(s) or disbursements of prior loans made to the borrower, comaker, or endorser after the date the physician certified the discharge application stating that he or she is totally and permanently disabled. If the lender’s records indicate (or the lender is otherwise aware) that a new loan(s) was made during the 3-year conditional discharge period or the 3-year post-discharge monitoring period, the lender must deny the discharge and inform the borrower, comaker, or endorser. If any FFELP loan was certified prior to the date the physician certified the discharge application, any proceeds of the loan that are disbursed after the date of the physician’s certification must be returned to the holder within 120 days of disbursement or the lender must deny the discharge and inform the borrower, comaker, or endorser. For information regarding a borrower’s eligibility for a new loan(s) after the conditional period, see Section 5.5.~~
~~[§682.402(c)(45)(B) and (C); §685.213(b)(4)(i)(B) and (C)]~~

If a borrower, comaker, or endorser received a TEACH grant or Title IV loan prior to the date the physician certified the borrower’s discharge application and a disbursement of that loan or grant is made during the period from the date of the physician’s certification until the date the Department grants a discharge, the Department will suspend processing of the borrower’s loan discharge request until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Department, as applicable. If the full amount of the disbursement is not returned, the Department will deny the total and permanent disability (TPD) loan discharge application. If the borrower, comaker, or endorser receives a new loan or TEACH grant after the date that the borrower became disabled and while the TPD loan discharge application is being reviewed, the Department will deny the discharge application and will instruct all holders of the borrower’s loans to return those loans to repayment.
[§682.402(c)(4)-(5); §685.213(b)(3)]

The Department may require the borrower to submit additional medical evidence if it determines that the borrower’s application does not conclusively prove that the borrower is totally and permanently disabled. As part of the Department’s review of the borrower’s discharge application, the Department may arrange for an additional review of the borrower’s condition by an independent physician at no expense to the borrower.
[§682.402(c)(3)(ii)~~(iv);~~ §685.213(b)(2)]

*Discharge When Guarantee Is Lost*

If there have been servicing errors on the loan such that the loan has lost its guarantee, and those violations were not cured before the date the Department ~~lender~~ determined that the borrower was totally and permanently disabled, the lender must discharge the loan—even though the balance will not be reimbursed by the guarantor.
[§682, Appendix D, I.E.2]

*Discharge Based on a Determination of Total and Permanent Disability*

Total and permanent disability (TPD) loan discharge applications submitted on or after July 1, 2013, are submitted to the Department. ~~determinations made by the lender on or after July 1, 2002, and subsequently paid as a claim by the guarantor, may be permanently assigned to the Department~~. If t~~T~~he Department ~~then~~ determines ~~if~~ that ~~the certification and information provided by~~ the borrower, comaker, or endorser ~~support the conclusion that he or she~~ meets the criteria for a total and permanent disability loan discharge, it will advise the lender to file a claim with the guarantor.

If the borrower has been approved for TPD under the standard process and the loan has not lost the guarantee, the loan will be assigned or, in the case of a comade Consolidation loan, referred to the Department after claim payment. Otherwise, if the borrower has been approved for a TPD loan discharge based on a VA determination and the loan has not lost the guarantee, the guarantor will pay the claim and the loan is not assigned or referred to the Department.

If the Department determines that the certification and information provided by the borrower, comaker, or endorser do not support the conclusion that he or she meets the criteria for a total and permanent disability loan discharge, the Department notifies the borrower, comaker, or endorser that the application for a total and permanent disability loan discharge has been denied and that the loan is due and payable under the terms of the promissory note. The Department notifies the lender of its determination and the lender must return the loans to repayment status, or other appropriate status based on other factors.
[§682.402(c)~~(3)(iii)~~; §685.213(b)(2)(iii)]

For a total and permanent disability loan discharge application received on or after July 1, 2002, through June 30, 2010, a borrower who met ~~meets~~ certain eligibility criteria receiveds an initial disability determination and was ~~is~~ placed in a 3-year conditional discharge status. For a total and permanent disability loan discharge application received on or after July 1, 2010, a borrower who meets certain eligibility criteria receives a loan discharge and is placed in a 3-year post-discharge monitoring period.

~~1. Conditional Discharge Status~~

~~If the Department makes an initial determination that the borrower, comaker, or endorser is totally and permanently disabled, the Department sends notification to the borrower, comaker, or endorser that the loan—or the comaker's or endorser's obligation on the loan—is in a conditionally discharged status and that the conditional discharge period 1. Conditional Discharge Status will last for up to 3 years after the date the physician completed and certified the discharge application. The Department's notification identifies the following conditions that apply during the 3-year conditional discharge period:~~

- ~~The disabled borrower, comaker, or endorser is not required to make any payments on the loan.~~
- ~~The disabled borrower, comaker, or endorser is not considered delinquent or in default on the loan, unless he or she was delinquent or in default at the time the conditional discharge was granted.~~
- ~~The disabled borrower, comaker, or endorser must promptly notify the Department of any changes in address or phone number.~~
- ~~The disabled borrower, comaker, or endorser must notify the Department if his or her annual earnings from employment exceed 100% of the poverty line for a family of two.~~
- ~~The disabled borrower, comaker, or endorser must provide the Department, upon request, with additional documentation or information related to his or her eligibility~~

~~for a total and permanent disability loan discharge.~~
~~[§682.402(c)(4)(i)(C)(ii)(E); §685.213(b)(5)(i) – (iii)]~~

- ~~The disabled borrower, comaker, or endorser must provide the Department, upon request, with additional medical evidence if the Department determines that the borrower's, comaker's, or endorser's application does not conclusively prove that the borrower, comaker, or endorser is disabled. As part of this review or at any time through the end of the conditional discharge period, the Department may arrange for an additional review of the borrower's, comaker's, or endorser's condition by an independent physician at no expense to the applicant.~~
~~[§682.402(c)(4)(v); §685.213(b)(2)(iv)]~~

- ~~The disabled borrower, comaker, or endorser must not receive a new TEACH grant or a new loan under the Federal Perkins Loan Program, the FFELP, or the Federal Direct Loan Program, except for a FFELP or Direct Consolidation loan that does not include any loans that are in a conditional discharge status.~~
~~[§682.402(c)(4)(i)(B); §685.213(b)(4)(i)(B)]~~

- ~~If any FFELP loan was certified prior to the date the physician certified the discharge application, any proceeds of the loan that are disbursed after the date of the physician's certification must be returned to the holder within 120 days of the disbursement date(s) to preserve the borrower's discharge eligibility.~~
~~[§682.402(c)(4)(i)(C); §685.213(b)(4)(i)(C)]~~

- ~~If the borrower satisfies the criteria for a total and permanent disability loan discharge during and at the end of the conditional discharge period, the Department does both of the following:~~

  - ~~Discharges the balance of the loan.~~

  - ~~Returns to the person who made payments any that were received after the date that the physician completed and certified the borrower's loan discharge application.~~

~~The Department also notifies the disabled borrower, comaker, or endorser, for those loans assigned to the Department, that if at any time during the 3-year conditional discharge period he or she does not continue to meet the eligibility requirements for a total and permanent disability discharge, the Department or the loan holder, as applicable, will resume collection activity on the loan but will not require the borrower to pay any interest that accrued on the loan from the date of the initial determination of total and permanent disability through the end of the conditional discharge period.~~
~~[§682.402(c)(4)(ii)(C)(ii)(E); §685.213(b)(4)(ii)(B)]~~

~~2.~~ Post-Discharge Monitoring Period

If the Department makes a determination that the borrower, comaker, or endorser is totally and permanently disabled, the Department places the loan(s) into a ~~notifies the borrower, comaker, or endorser that the loan—or the comaker's or endorser's obligation on the loan—is discharged and that the loan is placed in a post-discharge monitoring period. The~~ post-discharge monitoring period that will last for 3 years after the date the Department grants the discharge. (TPD determinations made based on VA documentation are not subject to the post-discharge monitoring requirement.)

The Department's notification identifies the following conditions that apply during the 3-year post-discharge monitoring period:

- The disabled borrower, comaker, or endorser must promptly notify the Department of any changes in his or her address or phone number.

- The disabled borrower, comaker, or endorser must promptly notify the Department if his or her annual earnings from employment exceed 100% of the poverty line for a family of two.

- The disabled borrower, comaker, or endorser must provide the Department, upon request, with documentation of his or her annual earnings from employment.

- If the TPD determination is made based on SSA documentation, the borrower must notify the Department if he or she receives notice from the Social Security Administration that the borrower is no longer considered disabled or that the borrower's continuing disability review will no longer fall into the five- to seven-year period indicated on the SSDI or SSI benefit notice originally submitted with the TPD application.
  [§682.402(c)(7)]

- The Department reinstates the borrower's, comaker's, or endorser's obligation to repay a loan that was discharged if any of the following conditions apply to the disabled borrower, comaker, or endorser:

  – ~~He or she has a~~ Annual earnings from employment ~~that~~ exceed 100% of the poverty line for a family of two.

  – ~~He or she receives~~ The Department receives notice that a new TEACH grant or a new Title IV loan is disbursed, except for a Federal or Direct Consolidation loan that includes loans that were not discharged.

  – ~~He or she fails to ensure that the full amount of any~~ Some portion of a disbursement of a Title IV loan or TEACH grant received prior to the discharge date that ~~is~~ was made during the 3-year period following the discharge date is not returned to the loan holder or to the Department, as applicable, within 120 days of the disbursement date.

  – The Department receives notice that the borrower is no longer considered disabled or that the borrower's continuing disability review will no longer fall into the five- to seven-year period otherwise indicated on the SSDI or SSI benefit notice originally submitted with the total and permanent disability discharge application.

  [§682.402(c)(5)(i)(A) – (C); §682.402(c)(6); §682.402(c)(7); §685.213(b)(4)(i)(A) – (C); §685.213(b)(5)]

*NSLDS Reporting during ~~the Conditional and~~ Post-Discharge Monitoring Period for Comade Loans*

In cases where a comaker of a joint Consolidation or PLUS loan has applied for a total and permanent disability loan discharge, the lender must ensure accurate reporting to the guarantor for NSLDS purposes. The lender must report the correct status of the non-dischargeable portion to the guarantor for subsequent reporting to the NSLDS in a timely manner. The NSLDS currently reports joint Consolidation loans and comade PLUS loans under one primary borrower only. However, to ensure proper reporting during the ~~conditional or~~ post-discharge monitoring period, ~~as applicable,~~ the lender should report the non-dischargeable portion under the non-disabled borrower's name and Social Security number (SSN) to the guarantor. If the borrower on record with the guarantor and the NSLDS is the disabled borrower, the guarantor's records and the NSLDS must be updated to reflect the non-disabled borrower as the borrower of record. If the discharge is denied, the lender may resume reporting the full balance of the loan under the borrower currently being reported. If a final discharge is granted, the lender continues to report the non-discharged portion of the Consolidation loan under the non-disabled borrower's name and SSN.

*Total and Permanent Disability Loan Discharge Payment*

~~Federal regulations require a guarantor to determine if the borrower, comaker, or endorser~~

~~meets the eligibility criteria for a total and permanent disability (TPD) discharge.~~ If the Department ~~guarantor~~ determines that the borrower, comaker, or endorser meets the disability discharge criteria, the Department will advise the lender to file a claim with the guarantor. The guarantor will take the following actions, as appropriate:

- For a loan made solely to ~~the~~ a single borrower, ~~or a PLUS loan with an endorser where the borrower is the party applying for the loan discharge,~~ the guarantor will pay the lender the remaining balance on the loan, and, under the standard process, ~~and~~ assign the loan to the Department. Under the VA process, the guarantor will pay the claim but does not assign the loan.

- If the borrower satisfies the criteria for a total and permanent disability loan discharge, the Department discharges the balance of the loan and the loan holder returns to the person who made the payments any that were received after the date of disability as provided by the Department (on or after date of disability, if based on VA documentation). ~~that the physician completed and certified the borrower's loan discharge application~~. The discharge and return of payments are made before the loan enters the post-discharge monitoring period.
[§682.402(c)(3)(ii); §685.213(b)(2)(ii)]

- For a comade (spousal) Consolidation loan, the guarantor will pay the lender the amount that represents the disabled comaker's portion of the Consolidation loan. If the discharge was made under the standard process, the guarantor will refer the loan to the Department for monitoring of the comaker during the post-discharge monitoring period. The loan is not referred under the VA process.

- ~~The guarantor will forward the disability documentation to the Department for determination of the final discharge eligibility.~~

- For a comade PLUS loan or a PLUS loan with an endorser where the endorser is the party applying for the loan discharge, the ~~guarantor will forward the documentation to the Department for a determination of final discharge eligibility. The~~ guarantor will not remit a claim payment to the lender but will correct any applicable records to remove the endorser or comaker information. If the discharge was granted under the standard process, the guarantor will refer the loan to the Department for monitoring of the borrower or endorser, as applicable, during the post-discharge monitoring period. The loan is not referred under the VA process.

*Timely Filing Deadline for Total and Permanent Disability Claims*

A lender must file a disability claim within 60 days of receiving notice from ~~a complete loan discharge application or other form(s) approved by~~ the Department that the borrower's discharge application has been approved. If a disability claim is not filed by the 60th day, the guarantor will still purchase the claim—unless prior servicing violations were not cured appropriately. However, the claim will be subject to an interest penalty, and the lender will be required to repay all interest benefits and special allowance payments for amounts received or otherwise payable after the expiration of the 60-day deadline.
[§682.402(g)(2)(ii)]

~~*Notification Requirements after Claim Filing or Filing of a Partial Discharge Request*~~

~~After a lender receives payment of a total and permanent disability claim, the lender must notify the borrower that the loan will be assigned to the Department for determination of discharge eligibility and no payments are due on the loan. The notification must also inform the borrower that, to remain eligible for final discharge, he or she cannot earn income from employment exceeding the poverty line for a family of two, receive any new Title IV loans (with the exception of a FFELP or Direct Consolidation loan that does not include loans to be discharged), and must ensure the full amount of any Title IV loan made on or after the date the physician completed and certified the discharge application is returned to the holder within 120 days of the disbursement date.~~

~~[§682.402(c)(5)(vi)]~~

~~After the lender receives payment of a total and permanent disability claim for a loan made solely to a single borrower or for a portion of a Consolidation loan attributable to a comaker, the lender must notify the borrower or comaker that the loan or a portion of the loan will be assigned to the Department for determination of eligibility for a total and permanent disability loan discharge. After the lender receives notification from the guarantor that the loan discharge application has been forwarded to the Department for a determination of total and permanent discharge eligibility, the lender must notify the PLUS loan borrower that the comaker's or endorser's discharge application has been forwarded to the Department. [§682.402(c)(5)(vi)]~~

~~If the guarantor determines that the borrower, comaker, or endorser is not eligible for loan discharge, the guarantor will notify the lender with an explanation of the reason for the denial. The lender must notify the borrower, comaker, or endorser that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower, comaker, or endorser that the lender will resume collection activities on the loan. [§682.402(c)(5)(v)]~~

**PROPOSED LANGUAGE - COMMON BULLETIN:**

**Revised Total and Permanent Disability (TPD) Discharge Process**

The *Common Manual* is being revised to describe the new policies and processes by which the Department will make future determinations of a borrower's, endorser's, or comaker's eligibility for a loan discharge based on total and permanent disability. Revised policy describes how lenders will refer all borrower inquiries and correspondence regarding the TPD process to the Department, and how the Department will instruct the lender when to suspend collection activity and when to file a claim with the guarantor. Revised policy amends the claim documentation requirements and explains the 45-day claim payment time frame for all TPD claims. Previously only TPD claims based on a determination by the Veterans Administration were held to a 45-day claim payment time frame.

Revised policy adds to the TPD documentation process the use of certain disability determinations made by the Social Security Administration. A borrower may be considered totally and permanently disabled for purposes of the FFELP if the borrower submits documentation from the Social Security Administration that includes a notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. The letter must include a statement that the borrower's next scheduled disability review will occur within 5 to 7 years.

Revised policy also eliminates language about TPD policies and processes that are no longer applicable, and makes other technical changes and updates to existing language.

**GUARANTOR COMMENTS:**

None.

**IMPLICATIONS:**

*Student/Borrower:*

A borrower will notify Department if he or she intends to file a TPD discharge application and will send the application to the Department for review and determination.

*School*:

None.

*Lender/Servicer:*

A lender may need to revise its procedures to adapt to the new TPD process.

*Guarantor:*

A guarantor may need to revise its claim and program review procedures to adapt to the new TPD process.

*U.S. Department of Education*:

The Department may need to revise its procedures to adapt to the new TPD process.

## To be completed by the Policy Committee

**POLICY CHANGE PROPOSED BY:**
CM Policy Committee

**DATE SUBMITTED TO CM POLICY COMMITTEE:**
June 15, 2012

**DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:**
May 9, 2013

**PROPOSAL DISTRIBUTED TO:**
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

**Comments Received From:**
AES/PHEAA, ASA, College Assist, FAME, Great Lakes, MGA, NASFAA, NCHER TPD Workgroup & Program Regulations Committee, NELA, PPSV, SCSL, SLSA, TG, TSAC, UHEAA, and USA Funds.

**Responses to Comments**

Many of the commenters supported this proposal as written. Several commenters recommended wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

**COMMENT:**
Several commenters requested changes to the effective date and triggering event, noting, in each case, that the number of events and the overall scope of the proposal requires the use of varied triggering events, even though all are effective on and after July 1. Those commenters proposed a number of wording solutions but all of those solutions centered around the concept that there are generally three types of key events described in the policy proposal: when a loan holder receives a TPD application; when a loan holder receives notice that the borrower intends to file a TPD application; and when the lender receives any type of TPD-related notification from the Department.

One commenter noted that NCHER's TPD Question and Answer document includes an approved effective date and triggering event and suggested that perhaps we should not deviate from that approved guidance.

**Response:**
The Committee agrees that the triggering events should be expanded to address the various issues addressed in this single proposal. However, as noted above, the preponderance of community opinion suggests a variation on the NCHER Q/A language and provides strong rationale for those alternatives.

**Change:**
The effective date trigger event has been changed, blending those concepts and the wording suggestions of the commenters.

**COMMENT:**
One commenter suggested striking the language in Subsection 13.1.D, page 6, column 1, final paragraph, that refers to TPD claim filing requirements in Appendix C. The commenter noted that federal guidance on claim filing requirements appears to preempt any variations in the claim filing process.

**Response:**
The Committee cannot agree to this request. The various references to Appendix C entries throughout the *Common Manual* direct the user to appropriate policies, notes and instructions in the appendix that is the sole purview of individual guarantors. As long as there is an entry in Appendix C that refers to the materials, then the Manual itself must include the reference. Individual guarantors regularly assess the content and continued relevance of their Appendix C entries and when should all such references be removed, then the directional statement in the subsection would also be removed.

**Change:**
None.

**COMMENT:**
Several commenters noted that the claim file documentation requirements should include any documentation of the borrower's or endorser's, if applicable, eligibility for a reduced interest rate under the Servicemembers Civil Relief Act.

**Response:**
The Committee agrees.

**Change:**
Subsection 13.1.D, page 6, column 1, paragraph 2 has been revised to require the loan holder to include documentation, if applicable, regarding a borrower's or endorser's eligibility for a reduced interest rate under the Servicemembers Civil Relief Act.

**COMMENT:**
Several commenters suggested that Subsection 13.6.A be revised to indicate that the lender must notify the guarantor if it receives documentation that a loan on which it has filed a default claim "may qualify" for a different type of claim payment. They note that guarantors manage the post-claim administration of such claims in a variety of ways so the common policy should be as inclusive as possible, and not require the lender to actually determine if the borrower qualifies for another type of transaction.

**Response:**
The Committee agrees.

**Change:**
The language has been amended, as follows:

> If, after filing a default claim, the lender receives documentation that the loan(s) ~~qualifies~~ <u>may qualify</u> for a different type of claim payment, the lender must forward the applicable documentation or otherwise notify . . .

**COMMENT:**
Two commenters requested, and several commenters agreed, that Subsection 13.6.A be amended to require the lender to notify the guarantor to cancel any DAAR and to process a default claim recall if the lender receives notification from the Department that the borrower intends to file a total and permanent disability claim or has submitted TPD documentation to the Department. The commenter noted that this notification would ensure that the guarantor ceases all collection activities. The commenter further noted that regulatory claim payment deadlines do not permit the guarantor to suspend its default claim processing. Thus, the lender will need to recall the claim, suspend collections, and re-file the claim if the Department does not approve the TPD application.

**Response:**
The Committee agrees. Guarantors are restricted by regulation to pay or return any claim within specific and rigid time frames. There are no provisions in regulation to permit the guarantor to hold/pend/suspend the claim review and payment process.

**Change:**
The language in Subsection 13.6.A has been amended to read as follows:

> <u>If the lender has filed a claim with the guarantor and receives information from the Department that the borrower intends to file or has submitted total and permanent disability documentation to the Department, the lender must notify the guarantor to cancel the Default Aversion Assistance Request or if a default claim has been filed, and not yet purchased, recall the claim.</u>

Since the commenters indicate a need to cancel any DAAR, the Committee has also inserted the language into Subsection 12.5.A to require the lender to cancel a DAAR under the same conditions.

**COMMENT:**
In Subsection 13.8.G, under the subheading "Suspending Collection," several commenters requested that the language more clearly state that if the borrower fails to submit the TPD loan application to the Department, the lender is required to resume collection the loan.

**Response:**
The Committee agrees.

**Change:**
The language has been amended, as follows:

> If the borrower fails to submit the TPD loan discharge application <u>to the Department</u> the lender ~~may~~ <u>must</u> resume collection on the loan(s) and . . .

**COMMENT:**
Two commenters suggested and several concurred with the comment that language in Subsection 13.8.G be amended to very clearly indicate that the Department will notify the lender when a borrower provides notice to the Department of his or her intent to file a TPD discharge application and, separately, that the Department will also notify the lender if it receives TPD documentation from the borrower. The commenters suggest that the language as written is not sufficiently clear that there are potentially two separate periods of suspended collection activities.

**Response:**
The Committee concurs that the suggested language adds clarity.

**Change:**
Language was added and amended to clarify that the lender may receive two separate notifications from the Department regarding a single borrower's TPD discharge application status and that the lender may be required to process two separate periods of suspended collections activities.

**COMMENT:**
Two commenters requested, and other commenters concurred, that the Committee remove language regarding the potential TPD discharge of a loan that was paid in full by involuntary payments in some instances. The commenters noted that only loans held by guarantors are paid by involuntary payments, and since the post-claim guarantor processing policies are not the subject of common FFELP administrative policies, the content is inappropriate for inclusion in the Manual.

**Response:**
The Committee agrees.

**Change:**
Information regarding the potential TPD discharge of certain loans paid in full by involuntary payments has been removed.

**COMMENT:**
Two commenters requested, and other commenters concurred, that the Manual should include an explanatory reference that to be consistent with federal terminology, the term "standard total and permanent disability" refers to determinations under both the Social Security Administration and based on a physician's certification.

**Response:**
The Committee concurs.

**Change:**
A brief note has been added to the language of Subsection 13.8.G to clarify this terminology. Additionally, when identified, conforming language changes are made through other portions of the text.

**COMMENT:**
One commenter requested that when referring to an endorser, the language be amended to clarify that the endorser is related to a PLUS loan.

**Response:**
The Committee disagrees. While not prevalent, some lenders still hold older loans made under older loan programs on which an endorser was collected on loan types other the PLUS program loans.

**Change:**
None.

**COMMENT:**
One commenter noted that existing Manual language and proposed new language appear to stipulate that the borrower's representative may engage in the TPD process only if the borrower, comaker, or endorser is unable to do so. The commenter notes that nothing in regulations requires that the borrower, comaker, or endorser be unable to participate in the process. The commenter notes, however, that the representative must be "authorized" to act in that capacity, a stipulation that is missing from both existing and proposed language.

**Response:**
The commenter is correct. Nothing in regulations limits the intervention of a representative to those situations where a party to the loan is unable to participate.

**Change:**
Language in all three applicable locations is amended to strike the reference to the borrower, comaker, or endorser being unable to provide necessary documentation, and to insert the requirement that the representative must be authorized to represent the borrower, comaker, or endorser, as applicable.

**COMMENT:**
One commenter requested changes to Subsection 13.8.G. page 51, column 2, paragraph 2, to clarify the separate TPD policies, and thus the separate processes that those policies require for standard versus VA determinations. The commenter also suggested stating explicitly that loans discharged due to a VA determination are not assigned to the Department, but rather are "referred." The language that the commenter suggested also includes language to clarify that the guarantor pays claims only on loans that have not lost the guarantee.

**Response:**
The Committee agrees.

**Change:**
The Committee has restructured some of the text, adding the language that the commenter suggested and realigning some long, complex text into simpler paragraphs.

**COMMENT:**
Two commenters suggested, and other commenters concurred, that language regarding the guarantor's processes as described under subheading "Total and Permanent Disability Loan Discharge Payment" did not fully or accurately describe each of the possible payment scenarios under the new process. The commenters provided nearly identical wording suggestions that clarified the following:

- The simplest process by which a single borrower, responsible for a single loan, is determined eligible and how the guarantor pays the loan and assigns it to the Department.
- The return of payments made by or on behalf of the borrower when the loan is discharged.
- The process by which the guarantor pays a comade Consolidation loan, and that the loan is not assigned but referred to the Department for post-discharge monitoring.
- The process by which a guarantor relieves the repayment obligation of any comaker or endorser on a PLUS loan is the endorser or comaker is determined to be disabled, and that the loan is neither assigned nor referred.

**Response:**
The Committee agrees.

**Change:**
The language of the bullets under the noted subheading is amended as requested by the commenters, with minor language changes to comply with *Common Manual* style parameters.

**COMMENT:**
Several commenters suggested the addition of policy changes to reflect the appropriate loan servicing protocols for comade loans, and offered extensive language revisions.

**Response:**
The Policy Committee is enormously grateful for the work that those commenters invested in researching the appropriate changes and crafting proposed language. As the language included in those changes was not the subject of this proposal and the changes that the commenters suggest are extensive, the Policy Committee has chosen to add the issue to its list for a separate policy crafting effort, focused solely on that issue, and to move forward with this proposal without including the changes that the commenters suggest. The Committee will commit to addressing the issue at the earliest possible opportunity.

**Change:**
None.

**COMMENT:**
Two commenters suggested, and other commenters concurred, that language in Subsection 13.8.G, page 51, under the subheading "*Discharge When Guarantee is Lost*" should include new information approved by the Department via the NCHER Implementation Q&A to read as follows:

> *Discharge When Guarantee Is Lost*
>
> If there have been servicing errors on the loan such that the loan has lost its guarantee, and those violations were not cured before the date the Department determined that the borrower was totally and permanently disabled, the lender must discharge the loan—even though the balance will not be reimbursed by the guarantor. <u>The loan's guarantee is permanently revoked with no opportunity for cure, unless the borrower's loan is reinstated in the TPD process during the 3-year monitoring period. The lender must return any payments received by the lender after ether the date the physician certified the borrower's discharge application or the date the Department received SSA notification of award for SSI or SDDI, or on or after the effective date of determination by the VA, to the person who made the payments. In addition, the lender must notify the Department and the guarantor if a claim not yet submitted, that the borrower's loan has lost the guarantee and the loan will not be claim paid or assigned for monitoring.</u>
> [§682, Appendix D, I.E.2 <u>and clarified in the NCHER Implementation Q&A approved by the Department in March 2013</u>]

**Response:**
The Committee discussed the comment and is concerned that the new guidance has not yet been officially published by the Department. The Committee will add this issue to its list of issues for further research and discussion, and as with other issues related to these key claim processes, will address them at its earliest opportunity.

**Change:**
None.

jd &bg/chh

## *COMMON MANUAL* – FEDERAL POLICY PROPOSAL

**Date:** May 16, 2013

| | | | |
|---|---|---|---|
| | DRAFT | Comments Due | |
| | FINAL | Consider at GB meeting | |
| X | APPROVED | with no changes | May 16 |

**SUBJECT:** **HEROES Waivers Updates**

**AFFECTED SECTIONS:** **H.4.B HEROES Act Waivers**
**Figure H-2**

**POLICY INFORMATION:** **1289/Batch 195**

**EFFECTIVE DATE/TRIGGER EVENT:** September 27, 2012.

**BASIS:**
*Federal Register*, Vol. 77, Number 188, published September 27, 2012, pages 59311-59318.

**CURRENT POLICY:**
Current policy indicates that the HEROES waivers expired September 30, 2012. It also includes waivers for the 3-year armed forces deferment and does not include waivers related to the requirement to annually review a borrower's continuing partial financial hardship (PFH) when the borrower is repaying under an income-based repayment plan.

**REVISED POLICY:**
Revised policy extends the HEROES waivers to September 30, 2017. Revised policy also eliminates the waivers applicable to the armed forces deferment and implements waivers of the annual documentation requirement for affected individuals who are repaying FFELP loans under an income-based repayment plan. Revised policy requires the lender to maintain for three years, plus a three-month transition period, the payment amount applicable under the most recent PFH calculation when the borrower is unable to provide updated income and family size documentation due to his or her status as an affected individual. Revised policy removes the requirement that a school eliminate from its calculation of the amount of funds it returns as "unearned funds", the amount of any charges that the school is required to cover, and has covered, with non-Title IV sources of aid.

**REASON FOR CHANGE:**
These changes are the result of changes to the HEROES provisions published in the *Federal Register*, Vol. 77, Number 188, published September 27, 2012, pages 59311-59318.

**PROPOSED LANGUAGE - *COMMON MANUAL*:**

Revise Subsection H.4.B, page 142, column 2, paragraph 2, as follows:

### H.4.B HEROES Act Waivers

The Higher Education Relief Opportunities for Students (HEROES) Act of 2003 (P.L. 108-76) requires the Department to publish waivers or modifications to statutory or regulatory provisions applicable to the Title IV federal student aid programs. The HEROES Act directs the Department to publish waivers and modifications that are appropriate to assist "affected individuals" who are also federal student aid applicants and recipients. The Department originally announced the HEROES Act waivers in a *Federal Register* notice dated December 12, 2003, effective until September 30, 2005. ~~In a *Federal Register* notice dated October 20, 2005, the Department extended the waivers to September 30, 2007. The Department further extended the waivers to September 30, 2012, in a *Federal Register* notice published December 26, 2007, unless the Department terminates or otherwise changes the provisions prior to that date.~~ Subsequent extensions in 2005, 2007, and changes published in the *Federal Register* notice September 27, 2012, again extend the waivers to September 30, 2017.

Revise Subsection H.4.B, page 150, column 1, paragraph 4, by striking the entire current entry labeled "15," as follows, then renumbering subsequent entries in the series as appropriate:

~~*15. Return of Title IV Funds – Unearned Funds Owed by the School* (see Subsections 9.5.A and 9.5.B, and the 09-10 FSA Handbook, Volume 5, Chapter 2, p. 5-100)~~

~~A school must return to the appropriate Title IV program its share of unearned funds for a withdrawn student. The amount that must be returned is the lesser of the amount of Title IV funds that the student did not earn, or the amount of institutional charges incurred by the student for the payment period or period of enrollment, multiplied by the percentage of funds not earned.~~

~~A school must return unearned funds for an affected individual as it must for any student who withdraws. However, for a student who withdraws because of his or her status as an affected individual, the amount of any charges that the school is required to cover, and has covered, with non-Title IV sources of aid is excluded from the student's total institutional charges.~~

~~**Example**: A student receives a state grant of $800 that must be used only for tuition charges. The school applies the state grant toward the total institutional charges of $1,000. The student withdraws. The school uses $200, the difference between the full institutional charges and the amount of the state grant the school was required to apply to institutional charges, as the student's total institutional charges for the payment period or period of enrollment when determining the amount of unearned Title IV funds that the school must return.~~

Revise Subsection H.4.B, page 151, column 1, paragraph 2, by striking the entire current entry labeled "18," as follows, then renumbering subsequent entries in the series as appropriate:

~~*18. Deferment – Armed Forces* (see Section 11.3 and Figure 11-1):~~

~~Certain borrowers are entitled to defer principal payments on a FFELP loan for periods not to exceed 3 years when the borrower is on active duty status in the U.S. Armed Forces, or a member of the National Guard or Reserves serving a period of full-time active duty in the Armed Forces. To qualify for deferment, the borrower must provide the loan holder with documentation establishing his or her eligibility for the deferment. (See Section 11.3 for detailed information about military deferment criteria.)~~

~~The Department modifies the 3-year cumulative limit on armed forces deferment so that the time during which affected individuals are serving on active duty is excluded from the time limit. The Department pays interest that accrues on subsidized Stafford loans during an extended deferment period under this modification. In addition, the Department waives the requirement that a borrower request the deferment. A loan holder may grant deferment to an affected individual based on a request from a family member or other reliable source. Further, the Department waives documentation requirements to allow a loan holder to grant an affected individual an armed forces deferment for a 1-year period without documentation. In order to grant a military deferment beyond the initial 1-year period, the loan holder must obtain supporting documentation from the borrower, a member of the borrower's family, or another reliable source.~~

Revise Subsection H.4.B, page 152, column 1, paragraph 1, as follows:

*22. Consolidating Defaulted Loans* (see Section 15.2)

A defaulted Title IV loan is eligible for consolidation if, at the time of application for the Consolidation loan, the borrower has agreed to repay the Consolidation loan under an income-sensitive or income-based repayment schedule, or the borrower has made satisfactory repayment arrangements. Satisfactory repayment arrangements for Consolidation loan eligibility purposes are defined as three, consecutive, on-time (received within 15 days of the due date), voluntary, full monthly payments. These payments must be reasonable and affordable with respect to the borrower's financial situation and must be received by the holder of the defaulted loan during the 3 months immediately preceding the receipt of a consolidating lender's verification certificate.

For an affected individual who establishes eligibility to consolidate a defaulted loan by making satisfactory repayment arrangements . . .

Revise Subsection H.4.B, page 152, column 1, paragraph 1, as follows:

23. Annual Reevaluation Requirements for the Income-Based Repayment (IBR) Plan

The lender must verify annually the borrower's income and family size, and determine whether the borrower continues to have a partial financial hardship (PFH), and requests annual documentation from each borrower repaying under an IBR.  A borrower who fails to provide the information required annually to confirm the PFH will have his or her monthly payment amount adjusted to the amount the borrower would pay under the ten-year standard payment plan.

Under the waiver, the lender must maintain the payment amount determined under the most recent PFH calculation if the borrower's status as an affected individual results in his or her inability to provide documentation of updated income and family size. The waiver persists for a three-year period followed by a three-month transition.

**Documentation Requirements**
A school, lender, or guarantor must document the application of a waiver or modification in such a way that it can report to the Department, upon request, the effect of the waivers and modifications.

Revise Figure H-2, page 144. See attached.

**PROPOSED LANGUAGE - COMMON BULLETIN:**

**HEROES Waivers Updates**

The *Common Manual* has been revised to reflect the extension of the HEROES Act provisions and changes to those provisions that were included in the September 27, 2012, *Federal Register*.

Revisions remove the requirement that a school eliminate from its calculation of the amount of funds it returns as "unearned funds," the amount of any charges that the school is required to cover, and has covered, with non-Title IV sources of aid.

Also, lenders no longer may waive certain requirements related to the Armed Forces deferment option because amended deferment rules provide for more expansive deferment options under other deferment types.

However, lenders must waive the annual reevaluation documentation requirement for borrowers repaying under an income-based repayment plan if the borrower cannot document income or family size due to his or her status as an affected individual. The lender must maintain the payment amount determined under the most recent PFH calculation for any affected individual if the borrower's status as an affected individual results in his or her inability to provide documentation of updated income and family size. The waiver persists for a three-year period followed by a three-month transition period.

**GUARANTOR COMMENTS:**

None.

**IMPLICATIONS:**

*Student/Borrower:*

A borrower with an income-based repayment plan who is an affected individual will have the opportunity to retain a consistent payment under IBR if they are unable to provide the necessary documentation for reevaluation for a period of up to three years.

*School*:

The lender's ability to continue the IBR under the most recent PFH calculation may prevent some borrowers from defaulting who would have done so during a cohort calculation period.

*Lender/Servicer:*

A lender may need to update policies and procedures, or to implement system changes to support the three-year period during which a borrower who is an affected individual may not provide the documentation necessary for the annual reevaluation but retain the PFH status that was most recently calculated.

*Guarantor:*
A guarantor may need to amend its policies and program review procedures.

*U.S. Department of Education*:
The Department may need to amend its program review procedures.

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**To be completed by the Policy Committee**

**POLICY CHANGE PROPOSED BY:**
CM Policy Committee

**DATE SUBMITTED TO CM POLICY COMMITTEE:**
February 21, 2013

**DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:**
May 9, 2013

**PROPOSAL DISTRIBUTED TO:**
CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

**Comments Received From:**
AES/PHEAA, ASA, College Assist, FAME, Great Lakes, MGA, NASFAA, NCHER TPD Workgroup & Program Regulations Committee, NELA, PPSV, SCSL, SLSA, TG, TSAC, UHEAA, and USA Funds.

**Responses to Comments**
Most of the commenters supported this proposal as written. One commenter recommended wordsmithing changes that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

**COMMENT:**
Five commenters noted that the "X" indicator in Figure H, row 23 is missing for the column labeled "Individual Lived and Worked in Declared Disaster Area," but that these individuals are in fact, eligible for applicable waivers.

**Response:**
The Committee concurs.

**Change:**
The Figure has been amended as noted.

**COMMENT:**
One commenter noted that the "X" indicator in Figure H, row 23, is missing for the column labeled "Individual Suffered Direct Economic Hardship."

**Response:**
The Committee concurs.

**Change:**
The Figure has been amended as noted.

**COMMENT:**
One commenter noted that both row 12 and 15 should be eliminated based on the results of federal analysis that the waivers themselves may result in additional hardships for affected individuals.

**Response:**

The Committee concurs that row 15 is eliminated and has stricken both the row and the corresponding explanatory text. However, the information in row 12 remains valid, is not stricken in regulation, and is still included in other community summaries of the HEROES provisions, including the NCHER summary file.

**Change:**
The indicator regarding row 15 in Figure H is removed as requested. Also, the Committee removed the language related to that line-item.

**COMMENT:**
One commenter suggested that the HEROES subsection be updated with current FSA Handbook cites.

**Response:**
The Committee concurs that updated cites would be helpful. Periodically, the Committee initiates a project cite sweep to update the Manual's cites in a systematic manner. We assure the community that the cite update project remains on the Committee's project list for a future date.

**Change:**
None.

bg/edited-chh

**Figure H-2**

| WAIVER TOPIC | Current Requirement Reference | U.S. Armed Forces Member | Dependent or Spouse of U.S. Armed Forces Member | National Guard Member | Dependent or Spouse of National Guard Member | Individual Lived or Worked in Declared Disaster Area | Individual Suffered Direct Economic Hardship |
|---|---|---|---|---|---|---|---|
| 9. Satisfactory Academic Progress | 8.4; 09-10 FSA Handbook, Volume 2, Chapter 10, p. 2-125 | X | | X | | X | |
| 10. Delivering Credit Balances for a Withdrawn Student | 8.8.D; 09-10 FSA Handbook, Volume 5, Chapter 2, pp. 5-42 to 5-44 | X | | X | | X | |
| 11. Approved Leave of Absence | 9.3; 09-10 FSA Handbook, Volume 5, Chapter 2, pp. 5-32 to 5-38 | X | | X | | X | |
| 12. Refund of Institutional Charges | 9.5.A; 09-10 FSA Handbook, Volume 5, Chapter 2, pp. 5-38 to 5-41 | X | | X | | | |
| 13.Return of Title IV Funds – Post-withdrawal Disbursements | 9.5.A; 09-10 FSA Handbook, Volume 5, Chapter 2, p. 5-96 | X | | X | | X | |
| 14. Return of Title IV Funds – Grant Overpayments Owed by the Student | 9.5.A; 09-10 FSA Handbook, Volume 5, Chapter 2, p. 5-104 | X | | X | | X | X |
| ~~15. Return of Title IV Funds – Unearned Funds Owed by the School~~ | ~~9.5.A, 9.5.B; 09-10 FSA Handbook, Volume 5, Chapter 2, p. 5-100~~ | ~~X~~ | | ~~X~~ | | ~~X~~ | ~~X~~ |
| ~~16.~~ 15.In-School and Grace Period | 10.2, 10.3.C | X | | X | | X | |
| ~~17.~~16. Deferment – In- School and Graduate Fellowship | 11.5, 11.6; Figure 11-1 | X | | X | | X | |
| ~~18. Deferment – Armed Forces~~ | ~~11.3; Figure 11-1~~ | ~~X~~ | | ~~X~~ | | | |
| ~~19~~17. Forbearance | 11.23.B | X | | X | | X | |
| ~~20~~18. Rehabilitation of Defaulted Loans | 13.7 | X | | X | | X | |
| ~~21~~19. Loan Forgiveness | 13.9.A | X | | X | | X | |
| ~~22~~20. Consolidating Defaulted Title IV Loans | 15.2 | X | | X | | X | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ~~23~~21. Collection Activities on Defaulted Title IV Loans | §682.410; 07-08 FSA Handbook, Volume 6 | X | | X | | X | |
| 22. Annual Reevaluation Requirements for Income-Based Repayment | 10.8.D | X | | X | | X | |

* See the subheading "Affected Individuals," above, for detailed information about criteria that HEROES Act waivers and modification recipients must meet.