



# UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-09-07

FP-09-05

CB-09-04

**SUBJECT:** Procedures for discharging Title IV loans based on a determination by the Department of Veterans Affairs that a veteran is unemployable due to a service-connected condition or disability.

**SUMMARY:** This letter explains the change made to §437(a) of the Higher Education Act by the Higher Education Opportunity Act that establishes a separate standard for determining whether certain veterans are totally and permanently disabled for Title IV loan discharge purposes. This letter provides implementation guidance to FFEL lenders, guaranty agencies, and Perkins school lenders on the procedures for processing total and permanent disability discharge requests for borrowers who are covered by the new statutory provisions.

Dear Colleague:

This Dear Colleague Letter provides an overview of the procedures for processing total and permanent disability loan discharges for Federal Family Education Loan (FFEL) Program and Perkins Loan borrowers who have been determined by the Department of Veterans Affairs (VA) to be unemployable due to a service-connected condition. The Department of Education (the Department) will follow the same procedures for Direct Loan borrowers and other borrowers whose loans are held by the Department, and for Teacher Education Assistance for College and Higher Education (TEACH) Grant recipients who have applied for total and permanent disability discharge of their TEACH Grant service obligations.

## I. Overview of Statutory Change

Section 437(b) of the Higher Education Opportunity Act (HEOA) amended §437(a) of the Higher Education Act of 1965, as amended (HEA) to provide that a FFEL loan may be discharged if the borrower—

. . . has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and . . . provides documentation of such determination to the Secretary of Education, [such borrower] shall be considered permanently and totally disabled for the purpose of discharging such borrower's loans under this subsection, and such borrower shall not be required to present additional documentation for purposes of this subsection.

This same standard applies to the Direct Loan Program in accordance with §455(a)(1) of the HEA. In the Perkins Loan Program, §464(b)(1)(A)(iv) of the HEOA amended §464(c)(1)(F) of the HEA to provide that a borrower's liability to repay a Perkins Loan Program loan shall be cancelled "if the borrower is determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability." These provisions became effective August 14, 2008 for the FFEL and Direct Loan programs, and July 1, 2008 for the Perkins Loan Program.

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## II. Department of Veterans Affairs Determinations That Qualify a Borrower for a Disability Discharge Under the New Statutory Standard

To qualify for a total and permanent disability loan discharge under the statutory standard described above, a veteran must have received a determination from the VA that he or she is unemployable due to a service-connected condition or disability.

We have consulted with the VA and gathered information about its disability determination process. We have determined that a 100% or total disability rating from the VA represents a determination that the veteran has a total impairment in earning capacity, i.e., is unemployable. In addition, a veteran with a less than 100% disability rating may qualify for total disability based on an individual unemployability determination, if the VA determines that the veteran's service-connected disabilities are sufficient to result in unemployability.

Accordingly, there are two types of VA determinations that qualify a veteran for a discharge of his or her Title IV student loans based on the statutory standard:

1. A determination that the veteran has a service-connected disability, or service connected disabilities, that are 100% disabling; or
2. A determination that the veteran is totally disabled based on an individual unemployability determination.

The VA grants individual unemployability only for service-connected conditions. Therefore, any determination of individual unemployability qualifies a veteran for discharge. In the case of a determination that a veteran is 100% disabled, the determination must specify that the disabilities are service-connected.

## III. Processing Loan Discharge Applications for Veterans Who Have Been Determined to be Unemployable Due to a Service-Connected Condition or Disability

The following procedures must be followed when processing a disability discharge request for a veteran:

1. The borrower must apply to the loan holder (i.e., the current owner of the loan) for a total and permanent disability discharge. For Perkins Loans, the loan holder is the Perkins school lender. For FFEL loans, the loan holder is the lender or, if a default claim has been paid on the loan, the guaranty agency. For FFEL or Perkins Loans that have been assigned to the Department, the loan holder is the Department. To apply, a borrower who has received one of the VA disability determinations specified above completes **only** Sections 1 and 3 of the recently approved *Discharge Application: Total and Permanent Disability* (TPD application) [OMB No. 1845-0065, Expiration Date: 12/31/2011] and submits the application to the loan holder.

**The borrower is not required to have a physician complete Section 4 of the TPD application.** Instead, the borrower submits with the application documentation from the VA showing that the borrower has received a determination of individual unemployability or has been determined to be 100% disabled due to one or more service-connected disabilities. The borrower may provide a copy of the VA Rating Decision or a letter from the VA confirming that the borrower has received one of the qualifying ratings. As explained above, a rating of 100% disabled must specify that the borrower's condition is service-connected. After receiving the TPD application, the loan holder must suspend collection activity on the loan.

2. For FFEL borrowers, the loan holder (either the lender or the guaranty agency) must ensure that the TPD application has been completed and that the appropriate VA documentation has been provided and must make a preliminary determination of the borrower's eligibility. If the current loan holder is the lender and the VA documentation indicates that the borrower is eligible for a TPD discharge, the holder must then submit the application and VA documentation to the guaranty agency. At the same time the FFEL lender should file a TPD claim with the guaranty agency. For FFEL borrowers, both the FFEL lender and the guaranty agency will make preliminary determinations of eligibility. For Perkins borrowers, the Perkins school must ensure that the TPD application has been completed and the appropriate VA documentation provided and make the preliminary determination of eligibility.
3. The preliminary determination of eligibility is based on the VA documentation provided by the borrower. FFEL lenders, guaranty agencies and Perkins schools must carefully review the documentation provided by the borrower when making preliminary determinations of eligibility. If the documentation clearly demonstrates that the borrower does not qualify for a discharge under the new statutory standard for certain veterans, the TPD request must be rejected by the FFEL lender, guaranty agency or Perkins school. For example, if the VA documentation states that the borrower is 100% disabled, but also states that the borrower's disabilities are not service-connected, the TPD claim must be rejected.
4. If the borrower appears to be eligible for a total and permanent disability discharge based on the VA documentation, the guaranty agency or Perkins school must submit a **copy** of the TPD application and VA documentation to the Department, and notify the borrower that his or her disability discharge request has been submitted to the Department for further review. The guaranty agency or Perkins school **does not** need to assign the loan to the Department.
5. After receiving the TPD application and supporting documentation from the guaranty agency or Perkins school, the Department will review the VA documentation. The Department may also contact the VA for more complete information regarding the borrower's VA disability rating. If the Department determines that the borrower meets the eligibility criteria for discharge under the standard for veterans with service-connected disabilities or conditions, the Department will instruct the guaranty agency or Perkins school to discharge the loan. Borrowers who are granted a TPD discharge through this process are not placed in a three-year conditional discharge period and are not required to provide any additional medical or income information to qualify for the discharge. The outstanding balance on the loan is discharged immediately.
6. Upon notification by the Department that the borrower qualifies for a discharge, the guaranty agency must pay the discharge claim to the lender. If the guaranty agency is the loan holder, it must discharge the loan. The Perkins school discharges the loan upon notification by the Department. For both FFEL and Perkins Loans, the loan holder refunds any payments that were made on or after the effective date of the grant of disability by the VA. A Rating Decision from the VA will generally state the effective date of the grant of disability in the section of the Rating Decision titled "Decision." The effective date of the grant of disability is NOT the Date of the Rating Decision or the Effective Date of Payment. A letter from a VA Regional Office may simply confirm the borrower's VA disability status, without providing an effective date. If the documentation provided by the borrower does not include an effective date, the Department will obtain the effective date from the VA, and provide that information to the guaranty agency or Perkins school. Receipt of a Title IV loan after the effective date does not disqualify a borrower for a TPD discharge; therefore the Department will not review the borrower's National Student Loan Data System (NSLDS) records for this purpose.

7. If a borrower's application for a TPD loan discharge based on VA documentation is denied by a Perkins school after its review or by the Department, the Perkins school must notify the borrower that the discharge request has been denied, and that the borrower must resume repayment on the loan. If the FFEL loan was held by a lender and the application is denied by a guaranty agency after its review or by the Department, the guaranty agency will return the claim to the lender. The FFEL loan holder will notify the borrower that the discharge request has been denied, and that the borrower must resume payment on the loan. The loan is deemed to have been in forbearance from the date collection activity was suspended. If the VA documentation suggests that the borrower may be totally and permanently disabled, but the borrower is not eligible for the total and permanent disability discharge process described in this letter because the borrower's disabilities are not service-connected, the FFEL loan holder or Perkins school must advise the borrower to re-apply for a TPD discharge through the standard TPD discharge process. To re-apply for a total and permanent disability discharge under the standard process, the borrower must have a physician complete the Physician's Certification Section of the TPD application and resubmit the TPD application to the loan holder. The borrower may include the VA documentation, as well as any other supporting documentation, along with the completed TPD application. The Department will take the VA documentation into consideration when conducting its medical review under the standard process for total and permanent disability discharges.

During the discharge process, loan holders must provide borrowers with a phone number they can call to speak with a loan holder representative if they have any questions about their discharge requests. The Department's Veterans Disability Discharge Unit (see contact information at the end of this letter) will assist loan holders in addressing questions about specific applications or processes for discharges on the basis of VA documentation. As with the current total and permanent disability discharge process, there is no formal appeals process for a borrower whose application for discharge has been denied.

#### **IV. Application Availability and Effective Date For Use**

We have revised the TPD application [OMB Number 1845-0065] to reflect changes to the TPD process made by final regulations that were published on November 1, 2007 [72 FR 61960], as well as the HEOA provisions described in this letter. The revised TPD application has been approved by the Office of Management and Budget and has been posted to the Department's Information for Financial Aid Professionals (IFAP) web site as an attachment to Dear Colleague Letters GEN-09-01, FP-09-01, and CB-09-01, which are available at this link:

<INSERT HYPERLINK>

While the revised TPD application is being phased in, Perkins, FFEL, and Direct Loan borrowers may apply for TPD discharges based on VA documentation using the earlier version of the application. The borrower may leave the Physician's Certification Section of the form blank when applying for a TPD discharge based on a qualifying disability determination by the VA. The Physician's Certification is in Section 3 of the earlier version of the TPD form, and is in Section 4 of the recently approved version. In place of the information requested in the Physician's Certification Section of the TPD form, the borrower must submit to the loan holder a copy of the appropriate VA documentation as described in this letter.

#### **V. Triggering Date for Implementation**

**The procedures for granting total and permanent disability discharges based on VA documentation are in effect as of the date of this Dear Colleague Letter.**

For FFEL and Direct Loan borrowers, total and permanent discharge requests based on VA documentation received on or after August 14, 2008 must be processed using the new procedures described in this letter. For Perkins Loan borrowers, total and permanent disability discharge requests based on VA documentation received on or after July 1, 2008 must be processed using the new procedures. Applications that were submitted on or after these dates and that are currently being processed under the "regular" TPD procedures may now be processed under the procedures outlined in this Dear Colleague Letter, if the borrower provides the appropriate documentation from the VA.

In addition to providing for total and permanent disability discharges based on VA determinations, the HEOA also modified the criteria for qualifying for a total and permanent disability discharge under the standard procedures. These new criteria will be effective July 1, 2010, and will be addressed in regulations that the Department will develop as part of the negotiated rulemaking process.

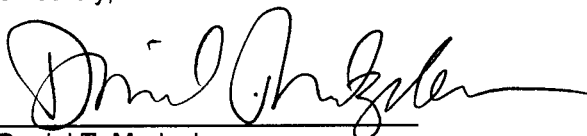
## VI. Mailing Address

Guaranty agencies and Perkins schools should send total and permanent disability discharge requests based on qualifying VA documentation to the Department at the following address:

U.S. Department of Education  
FSA, Business Operations, Processing Division  
Veterans Disability Discharge Unit  
61 Forsyth Street, SW 19T89  
Atlanta, GA 30303

Please include a contact name, phone number and e-mail address with each submission. For submission questions, please contact the Department's Veterans Disability Discharge Unit by phone at (404) 562-6012, by fax at (404) 562-6059, or by e-mail to [FSAAtlantaContracts@ed.gov](mailto:FSAAtlantaContracts@ed.gov). When calling, request the Veterans Disability Discharge Unit. When faxing or e-mailing, include "RE: Veterans Disability Discharge" in the subject line. The attached Questions and Answers provide additional information on the procedures for processing total and permanent disability discharge requests based on disability determinations from the VA. We look forward to working with you to successfully implement these new discharge procedures.

Sincerely,



Daniel T. Madzellan  
Delegated the Authority to Perform  
the Functions and Duties of the  
Assistant Secretary for  
Postsecondary Education

Attachment:

Qs and As

**Total and Permanent Disability Discharges  
Based on Department of Veterans Affairs Disability Determinations  
Questions and Answers**

- Q1.** What is the trigger date for processing total and permanent disability (TPD) discharge requests from eligible veterans under the streamlined procedures described in the accompanying Dear Colleague letter?
- A1.** The streamlined procedures apply to all TPD discharge requests that have been or are received by the loan holder on or after August 14, 2008 (or on or after July 1, 2008, for Perkins loans) and that are accompanied by the appropriate Department of Veterans Affairs (VA) documentation, as described in the accompanying Dear Colleague Letter. In addition, an eligible veteran whose TPD discharge request is currently in process under the regular discharge procedures may receive a TPD discharge under the streamlined procedures if he or she provides the appropriate VA documentation to the loan holder or to the Department, if the borrower's loan has already been assigned to the Department.
- Q2.** Will eligible veterans whose TPD applications are currently in process under the regular procedures at the Department of Education be notified of their right to submit VA disability documentation to prove eligibility for a TPD discharge under the new standard?
- A2.** As the Department conducts reviews of borrowers whose loans have been assigned to us as part of the regular procedures, we will identify veterans who might qualify for immediate discharge under the new standard. If it appears that a borrower might qualify for a discharge based on a VA disability determination, we will attempt to obtain the necessary documentation of the disability from the borrower or directly from the VA, so that the borrower's eligibility for a discharge can be evaluated.
- Q3.** Will veterans currently in the three-year conditional discharge period receive final discharges without completing the rest of the three-year conditional discharge period? How will they be notified of this possibility?
- Q3.** Eligible veterans currently in the three-year conditional period may qualify for an immediate discharge if the Department receives documentation of a qualifying VA disability determination. However, in most cases, the Department does not have veteran status information for borrowers who are currently in the three-year conditional discharge period. Veterans in a conditional discharge status will need to contact the Department and request consideration for immediate discharge based on the appropriate disability documentation from the VA.
- Q4.** What documentation is a borrower required to submit to the loan holder to receive a total and permanent disability discharge under the streamlined procedures, if the borrower is applying for a TPD discharge based on a qualifying VA disability determination?
- A4.** The borrower must submit to the loan holder a completed *Discharge Application: Total and Permanent Disability* (OMB No. 1845-0065) as well as the appropriate documentation from the VA. The borrower must only complete Sections 1 and 3 of the revised TPD application with the 12/31/2011 expiration date (or Sections 1 and 2 of the previous version of the TPD application with the 05/31/2008 expiration date). The borrower is not required to have a physician complete the Physician's Certification Section (Section 4 of the revised form; Section 3 of the previous version). Acceptable documentation from the VA includes, but is not limited to, a copy of a VA Rating Decision or a letter from a VA Regional Office showing that the borrower is 100% disabled due to one or more service-connected disabilities, or has received a determination of individual unemployability.

- Q5.** Is there specific language that will appear in any VA documentation that qualifies a borrower for discharge under the new standard for certain veterans?
- A5.** No. The documentation from different VA offices may use different terminology to describe a borrower's VA disability status. For example, acceptable documentation from the VA might say that a borrower has been granted "entitlement to individual unemployability" or say that, due to service-connected disabilities, the borrower is "100% disabled", or "permanently and totally disabled" or is "unable to work and earn money." FFEL lenders, guaranty agencies and Perkins schools must carefully review the VA documentation to determine if it demonstrates that the borrower is qualified for a TPD discharge under the new standard.
- Q6.** What is the status of a loan while a TPD claim is being processed under the new standard for eligible veterans?
- A6.** The loan holder must suspend collection activity on the loan during this period. If the discharge request is denied, the loan is considered to have been in forbearance during this period.
- Q7.** In the FFEL program, how does a guaranty agency pay a TPD claim to a FFEL loan holder under the new procedures for veterans?
- A7.** The loan holder will submit the total and permanent disability claim and the required documentation to the guaranty agency for review. The claim amount requested is the outstanding balance on the loan(s) if no borrower payments had been received after the effective date of the VA disability determination. If payments have been received after the effective date, the claim amount is the outstanding balance plus the amount of the payments received after the effective date. The FFEL loan holder must maintain the suspension of collection activity until the holder is notified by the guaranty agency of the status of the disability discharge request. The guaranty agency will pay the claim once the Department has approved the discharge. If the Department denies the discharge, the guaranty agency will not pay the claim and the loan holder will resume collection on the loan.
- Q8.** What is "the effective date of the VA disability determination"?
- A8.** For TPD discharge purposes, the effective date of the VA disability determination is the effective date of the grant of disability. The effective date of the grant of disability is generally reported in the section of a VA Rating Decision titled "Decision". The effective date of the grant of disability is NOT the Date of the Rating Decision or the Effective Date of Payment.
- Q9.** Is a guaranty agency or Perkins school required to assign a loan to the Department if the guaranty agency or school has determined that the borrower appears to be eligible for discharge based on a VA disability determination?
- A9.** No. However, after making a preliminary determination of the borrower's discharge eligibility, the guaranty agency or Perkins school must forward a copy of the completed TPD application and VA documentation to the Department for review. The Department will review the documentation and then notify the guaranty agency or Perkins school if the borrower qualifies for a discharge.

- Q10.** In the FFEL program, how are payments refunded to the borrower?
- A10.** Upon receipt of claim payment from the guaranty agency, the loan holder must forward to the payer the total amount of payments received after the effective date of the VA disability determination.
- Q11.** In the Perkins program, how are payments refunded to the borrower?
- A11.** Upon being notified by the Department that a borrower qualifies for a TPD discharge based on a VA disability determination, the Perkins school must return to the payer any loan payments made after the effective date of the VA disability determination. Schools may use their Perkins Funds to refund the payments.
- Q12.** If the discharged loan is a FFEL Consolidation Loan, how are payments that were made on the underlying loans prior to consolidation refunded to the borrower?
- A12.** For Consolidation Loans, the holder of the Consolidation Loan must refund any payments that were made on an underlying loan after the effective date of the VA disability determination. If the payment histories are not available from the prior lenders, the Consolidation Loan holder must make reasonable attempts to obtain the information from other sources. If the Consolidation Loan holder is unable to obtain a payment history from other sources, the holder must ask the borrower to submit evidence of payments made on the underlying loans after the effective date of the VA disability determination, and prior to the date the underlying loans were consolidated, to receive a refund of those payments.
- Q13.** Are all Perkins, FFEL and Direct Loan program loans made prior to the effective date of the VA disability determination eligible for discharge?
- A13.** Yes, all outstanding Title IV loans made prior to the effective date of the VA disability determination are eligible for discharge. In addition, receipt of Title IV loans after the effective date does not disqualify the borrower for a discharge of loans received prior to the effective date. Loans that were fully repaid or otherwise satisfied prior to the effective date of the VA disability determination are not eligible for discharge under these procedures, unless the loans were repaid by a Consolidation Loan, and there is an outstanding balance on the Consolidation Loan.
- Q14.** If the borrower meets the criteria for a total and permanent disability discharge based upon a VA disability determination, is the borrower subject to the three-year conditional discharge period?
- A14.** No. The borrower is not subject to the three-year conditional discharge period. The TPD discharge is final. A final discharge cancels the borrower's obligation (and, if applicable, any endorser's obligation) to repay the remaining balance on the outstanding FFEL, Perkins, and/or Direct Loan Program loans.
- Q15.** What loan status information is reported to NSLDS for a loan that has been discharged based on a VA determination of unemployability due to a service-connected condition?
- A15.** A new NSLDS loan status code for this discharge type is under development. In the interim, upon a guaranty agency's or Perkins school's discharge of a loan based on documentation from the VA, the guaranty agency or Perkins school must report a loan status of 'DI' to NSLDS for loans not in default and a loan status of 'DS' for defaulted loans. The guaranty agency must also make an online update of the borrower's NSLDS record, reducing the balance of all loans that were discharged to zero. Perkins schools will not report the cancellation code of "PI" for a VA discharge, but will only report the loan



status code of "DI" or "DS" and a zero balance. The Department will publish NSLDS Technical Updates providing further details on the implementation of the new loan status code for discharges based on VA disability determinations as needed.

- Q17.** How does a Perkins school report a loan cancelled under these provisions on the Fiscal Operations Report and Application to Participate (FISAP)?
- A17.** Perkins school must report the cancelled loan principal with other cancellations in Part III; Section A, Field 22 (disability based on VA determination) on the FISAP that will be available by August 1, 2009.
- Q18.** If a borrower has a loan discharged based on a VA disability determination, can the borrower later receive new Title IV loans?
- A18.** Yes. A borrower who has received a discharge of a prior loan based on a VA disability determination may receive a new Perkins, FFEL or Direct Loan program loan in accordance with the eligibility requirements in 34 CFR 674.9(g)(1) and (2), 682.201(a)(6)(i) and (ii), and 34 CFR 685.200(a)(1)(iv)(A), respectively.