



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

Proposed Regulatory Text for Issue Paper #1: Total and Permanent Disability Discharge
Session Three: December 6 -10, 2021

Part 674—Federal Perkins Loan Program

Commented [A1]: The Department has added language for Perkins and FFEL loans to match the proposed language in DL.

§ 674.61 Discharge for death or disability.

* * * * *

(b) *Total and permanent disability as defined in § 674.51(aa)(1).* (1) *General.* (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements in this section.

(ii) For purposes of paragraph (b) of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary -

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the

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borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain -

~~(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1); or~~

~~(B) A certification by a nurse practitioner or physician's assistant licensed by a State or a licensed certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as defined in §674.51(aa)(1);~~

~~(C) A Social Security Administration (SSA) Benefit Planning Query (BPQY) or an SSA notice of award or other documentation deemed acceptable by the Secretary indicating that—~~

~~(1) The borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that and the borrower's next scheduled disability review will be within five to seven years—;~~

~~(2) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within three years, and that the borrower's eligibility for disability benefits in the three-year review category has been renewed at least once;~~

~~(3) The borrower has a disability onset date for SSDI or SSI of at least five years prior or has been receiving benefits for a least five years prior to the application for TPD.~~

~~(4) The borrower qualifies for the SSA compassionate allowance program; or~~

~~(5) For borrower's currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met any of the requirements in paragraph (b)(2)(iv)(C) of this section-~~

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician's assistant or psychologist certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the

Commented [A2]: Disability onset date at least five years prior to application. Flagged here and included in conforming language for all loan programs.

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physician, nurse practitioner, physician's assistant or psychologist who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that -

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits data described in paragraph (b)(2) of this section supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date -

(A) The physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's application; or

(B) The Secretary received the SSA notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section.

(ii) ~~The Secretary may require the borrower to submit additional medical evidence if~~ the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1) the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

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(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician, ~~nurse practitioner, physician's assistant, or psychologist~~ certified the borrower's loan discharge application or the date the Secretary received the SSA ~~data described in paragraph (b)(2)(iv)(C) of this section~~ ~~notice of award for SSDI or SSI benefits~~ are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

(vi) If the Secretary determines that the ~~physician's~~ ~~physician, nurse practitioner, physician's assistant, or psychologist~~ certification or the SSA ~~notice of award for SSDI or SSI benefits~~ ~~data described in paragraph (b)(2)(iv)(C) of this section~~ provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes -

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the ~~physician's~~ ~~physician, nurse practitioner, physician's assistant or psychologist~~ certification or the date the Secretary received*

the SSA ~~notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section until the date of discharge~~. If a borrower received a title IV loan or TEACH Grant before the date the physician, ~~nurse practitioner, physician's assistant, or psychologist~~ certified the borrower's discharge application or before the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section~~ and a disbursement of that loan or grant is made during the period from the date of the ~~physician's~~ ~~physician, nurse practitioner, physician's assistant, or psychologist~~ certification or the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section~~ until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) ~~Receipt of new title IV loans or TEACH Grants after the date of the~~ ~~physician's physician, nurse practitioner, physician's assistant, or psychologist~~ certification or after the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section~~. If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, ~~nurse practitioner, physician's assistant, or psychologist~~ certified the borrower's discharge application or on or after the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits data described in paragraph (b)(2)(iv)(C) of this section~~ and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) ~~Conditions for reinstatement of a loan after a total and permanent disability discharge~~. (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within three years after the date the Secretary granted the discharge, the borrower ~~receives a new TEACH Grant or new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged~~.

~~(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);~~

~~(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;~~

~~(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or~~

~~(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary -

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

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(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include -

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 6090 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

~~(7) Borrower's responsibilities after a total and permanent disability discharge. During the three-year period described in paragraph (b)(6)(i) of this section, the borrower must—~~

~~(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;~~

~~(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(6)(i)(A) of this section;~~

~~(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary; and~~

~~(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five to seven year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

(8) Payments received after the *physician's* certification of total and permanent disability. (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

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(d) *Discharge without an application.* (1) The Secretary ~~may will~~ discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary--

(i) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) ~~described in paragraph (b)(2)(iv)(C) showing that the borrower qualifies for SSDI or SSI benefits and that the borrower's next scheduled disability review will be no earlier than five nor later than seven years.~~

(e) *Notifications and return of payments.* (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge, the Secretary notifies the borrower's lenders that the borrower has been approved for a disability discharge.

(3) In the case of a discharge based on a disability determination by VA—

(i) The notification--

(A) Provides the effective date of the disability determination by VA; and

(B) Directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to discharge the loan; and

(ii) The institution returns to the person who made the payments any payments received on or after the effective date of the determination by VA that the borrower is unemployable due to a service-connected disability.

(4) In the case of a discharge based on a disability determination by the SSA—

(i) The notification--

(A) Provides the date the Secretary received the SSA ~~data described in paragraph (b)(2)(iv)(C) of this section~~~~notice of award for SSDI or SSI benefits~~; and

(B) Directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary within 45 days of the notice described in paragraph (e)(2) of this section; and

(ii) After the loan is assigned, the Secretary discharges the loan in accordance with paragraph (b)(3)(v) of this section.

(5) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

(f) *No Federal reimbursement.* No Federal reimbursement is made to an institution for discharge of loans due to death or disability.

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Part 682—Federal Family Education Loan (FFEL) Program

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c) (1) *Total and permanent disability.* (i) A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the eligibility requirements in this section.

(ii) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower's loan discharge application is processed in accordance with paragraphs (c)(2) through (c)(8) of this section.

(iii) For a veteran who is totally and permanently disabled as described in paragraph (2) of the definition of that term in § 682.200(b), the veteran's loan discharge application is processed in accordance with paragraph (c)(9) of this section.

(iv) For purposes of this paragraph (c) -

(A) A borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary;

(B) References to "the lender" mean the guaranty agency if the guaranty agency is the holder of the loan at the time the borrower applies for a total and permanent disability discharge, except that the total and permanent disability discharge claim filing requirements applicable to a lender do not apply to the guaranty agency; and

(C) References to "the applicable guaranty agency" mean the guaranty agency that guarantees the loan.

(2) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b).* (i) If the borrower notifies the lender that the borrower claims to be totally and permanently disabled as described in paragraph (1) of

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the definition of that term in § 682.200(b), the lender must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary -

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time;

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans, and the lender is deemed to have exercised forbearance of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except that if the lender is a guaranty agency it may not capitalize accrued interest.

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain -

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b); ~~or~~

(B) A certification by a nurse practitioner or physician's assistant licensed by a State, or a licensed or certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §682.200(b); or

(~~C~~) An SSA Benefit Planning Query (BPQY) or an SSA notice of award ~~or Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits or other documentation deemed acceptable by the Secretary, indicating that—~~

(~~1~~) The borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits and the borrower's next scheduled disability review will be within five to seven years;

(2) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within three years, and that the borrower's eligibility for disability benefits in the three-year review category has been renewed at least once;

(3) The borrower has a disability onset date for SSSDI or SSI of at least five years prior or has been receiving benefits for a least five years prior to the application for TPD.

(4) The borrower qualifies for the SSA compassionate allowance program; or

(5) For borrower is currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met any of the requirements in paragraph (c)(2)(iv)(C) of this section indicating that the borrower's next scheduled disability review will be within five to seven years.

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician's assistant, or psychologist certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans, that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agencies that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician's assistant or psychologist who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the borrower that -

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) Secretary's review of total and permanent disability discharge application. (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph

Commented [A3]: See note above regarding use of "disability onset date."

~~(c)(2)(iv) of this section physician's certification or the SSA notice of award for SSDI or SSI benefits~~ supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled -

(A) As of the date the physician, ~~nurse practitioner, physician's assistant or psychologist~~ certified the borrower's application; or

(B) As of the date the Secretary received the SSA ~~data described in paragraph (c)(2)(iv)(C) of this section notice of award for SSDI or SSI benefits.~~

(ii) ~~The Secretary may require the borrower to submit additional medical evidence if~~ the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b) ~~the Secretary may require the borrower to submit additional medical evidence.~~ As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician ~~or other medical professional identified by the Secretary~~ at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician, ~~nurse practitioner, physician's assistant, or psychologist~~ certified the borrower's loan discharge application or the date the Secretary received the SSA ~~notice data described in paragraph (c)(2)(iv)(C) of this section of award for SSDI or SSI benefits~~ and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician, ~~nurse practitioner, physician's assistant, or psychologist~~ certified the borrower's loan discharge application or received the SSA ~~data described in paragraph (c)(2)(iv)(C) of this section. notice of award for SSDI or SSI benefits~~ to the person who made the payment.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

(v) If the Secretary determines that the ~~physician's~~ ~~physician, nurse practitioner, physician's assistant, or psychologist~~ certification or SSA ~~notice of award for SSDI or SSI benefits provided by the borrower~~ ~~data described in paragraph (c)(2)(iv)(C) of this section~~ does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes -

(A) The reason or reasons for the denial;

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(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the ~~physician's~~physician, nurse practitioner, physician's assistant or psychologist certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits data described in paragraph (c)(2)(iv)(C) of this section until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, ~~nurse practitioner, physician's assistant, or psychologist~~psychologist certified the borrower's discharge application or before the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~data described in paragraph (c)(2)(iv)(C) of this section and a disbursement of that loan or grant is made during the period from the date of the ~~physician's~~physician, nurse practitioner, physician's assistant, or psychologist certification or the Secretary's receipt of the SSA ~~notice of award for SSDI or SSI benefits~~data described in paragraph(c)(2)(iv)(C) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the ~~physician's~~physician, nurse practitioner, physician's assistant, or psychologist certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits*data described in paragraph (c)(2)(iv)(C) of this section. If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, ~~nurse practitioner, physician's assistant or psychologist~~ certified the borrower's discharge application or the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~data described in paragraph (c)(2)(iv)(C) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with (c)(3)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.—

~~(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);~~

~~(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged; or~~

~~(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or~~

~~(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five to seven year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary -

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

~~(i)~~ (ii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include -

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60-90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

~~(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (c)(6)(i) of this section, the borrower must -~~

~~(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;~~

~~(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(6)(i)(A) of this section;~~

~~(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment, on a form approved by the Secretary; or~~

~~(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five to seven year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

(8) *Lender and guaranty agency actions.* (i) If the Secretary approves the borrower's total and permanent disability discharge application -

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician, nurse practitioner, physician's assistant, or psychologist certified the borrower's loan discharge application or after the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~data described in paragraph (c)(2)(iv)(C) of this section as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

* * * * *

(10) *Discharge without an application.* (i) The Secretary ~~may will~~ discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary—

(A) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or

(B) Obtains data from the Social Security Administration (SSA) described in paragraph (c)(2)(iv)(C) of this section showing that the borrower qualifies for SSDI or SSI benefits and that the borrower's next scheduled disability review will be no earlier than five nor later than seven years.

(11) *Notifications and return of payments.* (i) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (c)(10) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(ii) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge, the Secretary notifies the borrower's loan holders that the borrower has been approved for a disability discharge. With this notification the Secretary provides the effective date of the determination by VA or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section notice of award for SSDI or SSI benefits, and directs the holder of each FFELP loan made to the borrower to submit a disability claim to the guaranty agency in accordance with paragraph (g)(1) of this section.

(iii) If the claim meets the requirements of paragraph (g)(1) of this section and §682.406, the guaranty agency pays the claim and must—

(A) Discharge the loan, in the case of a discharge based on data from VA; or

(B) Assign the loan to the Secretary, in the case of a discharge based on data from the SSA.

(iv) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

(v) Upon receipt of the claim payment from the guaranty agency, the loan holder returns to the person who made the payments any payments received on or after—

(A) The effective date of the determination by VA that the borrower is unemployable due to a service-connected disability; or

(B) The date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section notice of award for SSDI or SSI benefits.

(vi) For a loan that is assigned to the Secretary for discharge based on data from the SSA, the Secretary discharges the loan in accordance with paragraph (c)(3)(iv) of this section.

(vii) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

* * * * *

Part 685--William D. Ford Federal Direct Loan Program

§685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in §685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b)—(1) Borrower application for discharge.* Except as provided in paragraph (d)(2) of this section, to qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. If the borrower notifies the Secretary that the borrower claims to be totally and permanent disabled prior to submitting a total and permanent disability discharge application, the Secretary—

(i) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(ii) Suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days; and

(iii) Informs the borrower that the suspension of collection activity will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(2) ~~Physician Disability~~ Physician Disability certification or Social Security Administration (SSA) disability ~~notice of award determination~~. The application must contain—

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(i) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b); ~~or~~

(ii) A certification by a nurse practitioner or physician's assistant licensed by a State, or a licensed or certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b);

(iii) An SSA Benefit Planning Query (BPQY) or an SSA notice of award, or other documentation deemed acceptable by the Secretary, indicating that—

(A) The borrower qualifies for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits and the borrower's next scheduled disability review will be within five to seven years;

(B) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within three years, and that the borrower's eligibility for disability benefits in the three-year review category has been renewed at least once; ~~or~~

~~(C) The borrower has a disability onset date for SSSDI or SSI of at least five years prior or has been receiving benefits for a least five years prior to the application for TPD.~~

~~(D) The borrower qualifies for the SSA compassionate allowance payments program; or~~

~~(E) For borrower-s currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met any of the requirements in paragraphs (iii)(A) through (iii)(D) of this section. qualified for SSDI or SSI benefits with a disability review period of within five to seven years~~

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician's assistant, or psychologist certifies the application, if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician's assistant, or psychologist who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

Commented [A4]: See note above regarding use of disability onset date.

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the ~~physician's certification or the SSA notice of award for SSDI or SSI benefits data described in paragraph (b)(2) of this section §685.213(b)(2)~~ supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in §685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, ~~nurse practitioner, or physician's assistant, or psychologist~~ certified the borrower's application; or

(B) As of the date the Secretary received the SSA ~~notice of award for SSDI data described in paragraph (b)(2)(iii)(iii) or (iv) of this section. §685.213(b)(2)(iii) or (iv).~~

~~(ii) The Secretary will analyze certification from physicians, nurse practitioners, or physician assistants that suggest patterns of concern, such as large numbers of TPD applications certified by an individual, and may decline to accept the certifications at the Secretary's discretion.~~

~~(iii) The Secretary may require the borrower to submit additional medical evidence if~~ the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b), ~~the Secretary may require the borrower to submit additional medical evidence.~~ As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician ~~or other medical professional identified by the Secretary~~ at no expense to the borrower.

~~(iiiiiv)~~ After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician, ~~nurse practitioner, or physician's assistant, or psychologist~~ certified the borrower's loan discharge application or the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits—data described in paragraph §685.213(b)(2)(iii)(iii) or (iv) of this section.~~ The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

~~(ivv)~~ If the Secretary determines that the ~~physician's~~ physician, nurse practitioner, ~~or physician's~~ assistant, or psychologist certification or the SSA ~~notice of award for SSDI or SSI benefits data described in paragraph §685.213(b)(2)(iii)(iii) or (iv) of this section~~ provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the ~~physician's-physician, nurse practitioner, or physician's assistant, or psychologist~~ certification or the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~-data described in paragraph §685-213(b)(2)(iii)(iii) or (iv) of this section until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, ~~physician's assistant, or psychologist~~ certified the borrower's discharge application or before the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~-data described in paragraph §685-213(b)(2)(iii)(iii) or (iv) of this section and a disbursement of that loan or grant is made during the period from the date of the ~~physician's-physician, nurse practitioner, or physician's assistant, or psychologist~~ certification or the receipt of the SSA ~~notice of award for SSDI or SSI benefits~~-data described in paragraph §685-213(b)(2)(iii)(iii) or (iv) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) *Receipt of new title IV loans or TEACH Grants after the date of the ~~physician's-physician, nurse practitioner, or physician's assistant, or psychologist~~ certification, or after the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~-data described in paragraph §685-213(b)(2)(iii)(iii) or (iv) of this section.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, ~~physician's assistant, or psychologist~~ certified the borrower's discharge application or on or after the date the Secretary received the SSA ~~notice of award for SSDI or SSI benefits~~-data described in paragraph §685-213(b)(2)(iii)(iii) or (iv) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

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(7) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower ~~receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.—~~

~~(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);~~

~~(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;~~

~~(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or~~

~~(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five to seven year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than ~~60~~ 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

~~(8) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(7)(i) of this section, the borrower must—~~

~~(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;~~

~~(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(7)(i)(A) of this section;~~

~~(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form provided by the Secretary; and~~

~~(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five to seven year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

* * * * *

(d) Discharge without an application.

(1) The Secretary ~~may~~ will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary—

(i) Obtains data from the Department of Veterans Affairs showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) ~~described in paragraph (b)(2)(iii) of this section showing that the borrower qualifies for SSDI or SSI benefits and that the borrower's next scheduled disability review will be no earlier than five nor later than seven years.~~

(2) [Reserved]

(e) Notification to the borrower. (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge the Secretary discharges the loan—

(i) In accordance with paragraph (b)(4)(iii) of this section for a discharge based on data from the SSA; or

(ii) In accordance with paragraph (c)(2)(i) of this section for a discharge based on data from VA.

(3) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

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