



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

**Proposed Regulatory Text for Issue Paper #1: Total and Permanent Disability Discharge**  
**Session 2: November 1-5, 2021**

**§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 certification or Social Security Administration (SSA) disability notice of award determination.* The application must contain—

(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);

Commented [A1]: Added licensed psychologist

(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 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 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;

(B) 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;

(C) 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

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

Commented [A2]: For negotiators: The Department is having conversations with SSA to gauge the possibility of anyone with an onset date within the last five years. We do not have an answer on this at the moment.

(iv) 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 [BL1]: Since ED is defining here the categories of folks who are eligible for TPD discharge (either via the application or via automation), we feel very strongly that it is important to include people who have had a SSA recognized disability for five years here and have proposed text. In addition to the prospective v. retrospective elements of this that we discussed during negotiations, there are two major reasons we believe this is necessary. 1) The extended length of time it takes to establish a disability through the SSA process (an average of 506 days in FY2019, but historically over 2 years. See, <https://www.gao.gov/assets/gao-20-641r.pdf>). This means that many people who are waiting for their first MIP review have been disabled for 5 years and are eligible for TPD, but will not be caught in other categories SSA has laid out in existing text. As the GAO report on folks waiting points out, many people die waiting or enter bankruptcy. Enabling them to get their loans forgiven as soon as possible should be a goal for both ED and SSA, to prevent folks from falling into default. 2) Audits into SSA's data-sharing on the existing categories demonstrate substantial omissions: <https://oig-files.ssa.gov/audits/full/A-06-17-50281.pdf>. As a practical matter, it's also considerably easier for someone to prove their onset date or that they've been receiving disability benefits for five years than it is to prove what medical diary category they're in.

(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) 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.

~~(iii)(v)~~ 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) 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.

~~(iv)~~ 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) 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.

(w) 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) 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, nurse practitioner, ~~or 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) 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) 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) 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, nurse practitioner, ~~or 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) 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.

(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.~~

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(d) Discharge without an application.

**Commented [A3]:** Current language automating process published on August 23, 2021. Added for context.

(1) The Secretary may 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) 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.

**Commented [JW2]:** Don't we need to fix this. And should we change it to SHALL rather than may or at least say shall where reasonably feasible. Doesn't this limit automatic to MINE only?

Obtains data from SSA that the borrower satisfies the criteria in subsections xxxxxx