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SFA Information for Financial Aid Professionals
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Summary: Revised Procedures Related to Death and Total and Permanent Disability Discharge Requests for the Federal Family Education Loan (FFEL) Program

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Subject: Revised Procedures Related to Death and Total and Permanent Disability Discharge Requests for the Federal Family Education Loan (FFEL) Program

Dear Guaranty Agency Director:

The Department of Education's Office of Inspector General (OIG) recently completed a study of the process for granting discharges of Federal Family Education Loan (FFEL) Program loans due to death or total and permanent disability. The OIG's audit report focused on FFEL loan discharges granted from July 1, 1994 through December 31, 1996. Through a match of all borrowers receiving these discharges during this period with the Social Security Administration's master earning records, the OIG found that 23 percent of borrowers who received disability discharges during this period worked and earned money after the disability determination was made or the loan was discharged. The OIG also found that 2 percent of borrowers who received a discharge of their loan based on death were working and earning money after the loan was discharged. The OIG concluded from its review that inappropriate discharges were being provided to borrowers because of weaknesses in the current system for determining eligibility for the discharges. After reviewing the OIG report we have decided to implement the following changes to strengthen control of the process for granting death and disability discharges.

Loan Discharges Due to Death

We are concerned that documentation used to support discharges based on death may be easily forged or may not provide definitive proof of death. Section 682.402(b)(2) of the FFEL program regulations provides that the lender (or guaranty agency) may rely on a death certificate or other proof of death that is acceptable under applicable state law. If such documentation is not available, the guaranty agency is authorized to discharge a loan only if it determines that other evidence establishes that the borrower (or dependent student on whose behalf a parent has borrowed a PLUS loan) has died.

In order to strengthen the process of evaluating applications for discharge of loans based on death, we have decided that it is appropriate to interpret the regulations to require, generally, that a death cancellation may only be granted based on an original or certified copy of the death certificate. We believe this interpretation is consistent with the language of the regulation since certified death certificates are generally the ultimate proof of death under state law. In situations where the guaranty agency is unable to obtain an original or certified copy of the death certificate, it should contact our Financial Partners Channel.

We understand that stricter documentation standards for discharges based on death may lengthen the period required for securing the death certificate. The regulations in Section 682.402(b)(3) require the

loan holder to suspend collection activity on a loan for 60 days after receiving a request for a death discharge while attempting to obtain the documentation needed to grant the discharge. To be sensitive to the needs of the bereaved family, the Secretary will authorize guaranty agencies to extend the suspension of collection activities an additional 60 days if extra time is needed to obtain the necessary documentation.

Loan Discharges Due to Total and Permanent Disability

Under Section 682.200, an individual is considered totally and permanently disabled for loan discharge purposes only if the individual is "unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death." To address the issue of individuals receiving total and permanent disability discharges for conditions that do not meet this regulatory definition, we are requesting guaranty agencies to implement a more rigorous evaluation process for determining if a borrower qualifies for a total and permanent disability discharge. This process should include at a minimum:

Requiring additional documentation to support the borrower's application for loan discharge in cases where the information provided in the initial application is not definitive, is illegible or is incomplete. Loan holders may assist borrowers who are having difficulty paying their loans while their claims are being evaluated by granting forbearance or otherwise ceasing collection activities during the evaluation period.

Reaffirming the physician's certification if the diagnosis and prognosis do not appear to reach the standard of total and permanent disability. A disability discharge should not be granted based solely on the physician's certification if there is a question of the borrower's eligibility for the discharge. In such cases, agencies should contact the physician and review with the physician the standard that must be met to certify that a borrower is totally and permanently disabled. The guaranty agency should ensure that physicians clearly understand that the FFEL definition of total and permanent disability ("unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death") generally is a higher standard than that used by other federal or state agencies for disability related benefits or programs. Guaranty agencies are urged to consider retaining the services of a physician to assist them in evaluating claims for which there is a question related to the disabling medical condition and the prognosis for recovery. If a guaranty agency is still not satisfied that a borrower qualifies for a total and permanent disability discharge, the guaranty agency may require the borrower to obtain a second opinion from another physician instead of simply denying the discharge claim.

Assisting borrowers to obtain a deferment or forbearance in cases when it does not appear that the borrower is totally and permanently disabled, but there is evidence that the borrower's ability to repay has been impaired by a temporary disability. Although the temporary total disability deferment is not available to new borrowers after July 1, 1993, these borrowers may qualify for an economic hardship deferment as a result of economic difficulties stemming from the temporary disability.

We have revised the Total and Permanent Disability Cancellation Request form to ask the physician to identify whether he or she is a doctor of medicine or a doctor of osteopathy. The revised form also requires physicians to provide their state professional license number. The revised [Total and Permanent Disability Cancellation Request form](#) is currently available on our IFAP web site at <http://ifap.ed.gov> and on the NCHHELP web site at www.nchelp.org.

Future Activities

In consultation with guaranty agencies, lenders, and other interested parties, we expect to propose further changes to the Total and Permanent Disability Cancellation Request form to collect additional information regarding the borrower's disabling condition and prognosis for recovery that will assist agency staff in their reviews. We will also begin discussions with program constituents on other possible options for overhauling the process of granting disability discharges.

We will continue to explore strategies for ensuring that ineligible claims for loan discharges due to death or total and permanent disability are not granted. We appreciate the suggestions you shared for implementing short-term solutions. We look forward to working with you to develop and implement a

process that balances the need to ensure program integrity with the need for prompt decisions and sensitivity involving a minimum of burden for borrowers and their families.

Contact Person

Should you have questions or suggestions concerning the discharge process, please contact Cameron Ishaq. Mr. Ishaq will serve as the Department's contact person for guaranty agencies on issues related to death and total and permanent disability discharges. You can e-mail Mr. Ishaq at cameron_ishaq@ed.gov, telephone him at (202) 260-5076, or send him a FAX at (202) 708-8404.

Sincerely,

Jeff Baker, Director
Program Development Division

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