

Shaded = agreement reached  
 Bold = outstanding policy issues

## NCHelp Issues Matrix & FSA Response

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
1	Incomplete dates.	All dates must be complete. [1/16/04 e-mail]	The FFEL community has experienced the rejection of some assignments from the CDD Unit due to dates on the disability form being completed in a format other than the recommended MM/DD/YYYY format. We believe it is inappropriate to delay the processing of these borrowers' discharge requests for this reason alone. Dates provided on the form should be accepted if they include a month, day (only when applicable, see Issue 2 below) and year, as in any of the following examples: 1/4/04, 01/04/04, 1/4/2004, 01/4/2004, 01/04/2004, 1/04/04, 01/4/04, 1/04/2004.	Yes  Agreement was obtained that, as long as the dates are complete (in this case, this means that there is a month, a day of the month, and at least a 2-digit year), FSA will accept dates that do not conform to the MM/DD/YYYY format that appears on the form.
2	Incomplete Dates	The CDD Unit will accept the occasional discharge application with a month and date (year) only for the date of disability. [10/15/04 e-mail]	The FFEL community feels that guidance stating acceptance of dates in a month and year format (although ED guidance referred to "date" we now understand the intent was "year") may be granted on an "occasional" basis will lead to arbitrary enforcement. As long as the date of disability (as evidenced by month and year only) is after the date the loan was made, the form should be accepted.	Yes  If the day of the month is missing, FFEL agreed to obtain the day of the month when it is needed for purposes of comparing the 'unable to work' date to the date the loan was made, and for purposes of identifying refund eligibility.  FSA agreed to stop rejecting applications for this reason but expects all of the FFEL community to follow these guidelines to obtain the day of the month when it is critical, or else all GAs will have to change back to supplying the day of the month in every case.
3	Payment History	All pages with payment information must give the borrower's name, SSN, and date of disability. [2/6/04 e-mail]	The FFEL community agrees to provide the name and SSN. However, we do not agree that the date of the borrower's disability is necessary on each page of a payment history. The TPD date is already on the TPD application and to include it on a payment history is redundant and labor intensive.	Yes  Discussion was held regarding the extent of the problem. Agreement was reached that it is not necessary to provide the 'Unable to work' date on a payment history that provides a listing of payments. FSA does want the borrower's SSN on each page of a payment history listing.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
4	Payment History	If providing a list of payments, do not include non-payment transactions such as payment applications to principal and interest, fee applications, etc. [2/6/04 e-mail]	34 CFR 682.414 requires a guarantor and a lender to maintain a payment history showing date and amount of each payment received by that entity, as well as the amount allocated to principal, accrued interest, collection costs and other charges. Guarantors and lenders have developed systems to comply with this requirement. It is unnecessarily burdensome to expect guarantors and lenders to modify their systems to create two different payment histories; one excluding non-payment transactions as required in the e-mail guidance and one that captures the information required by regulations. If a listing of payments is provided in the assignment, the FFEL community recommends that the CDD Unit accept the system generated payment histories currently produced by guarantors and lenders.	Yes  Agreement was obtained that the lump sum payment history format provided to FSA by FFEL is acceptable, and that this form will not go through the official form process that requires OMB approval. If any FFEL participants want to continue to provide payment history listings, FSA still requires the separation of non-payment transactions from the history provided to the CDDU.
5	Payment History	If providing a lump sum, provide the effective date of the earliest payment included in the lump sum. [2/6/04 e-mail]	The definition of the lump sum amount is to provide the total amount paid by or on behalf of the borrower after the date the borrower became unable to work and earn money as certified by a physician. Therefore, there is no need to provide the effective date of the earliest payment included in the lump sum. We recommend that the Department instruct the CDD Unit to accept assignments with lump sum amounts without the effective date of the earliest payment, knowing that we are reporting only those payments eligible for refund as defined in 34 CFR 682.402(C)(1)(i).	Yes  FSA agreed to accept the lump sum payment history format provided by FFELP without a date of the earliest payment included, since the form certifies only payments received after the unable to work date are included.
6	Loans received after a prior TPD discharge.	Should provide copies of the physician's certification and borrower acknowledgement that were required for the borrower to receive the new loan(s)). [6/28/04 e-mail]	FFELP regulations, 34 CFR 682.201(a)(6)(i), require documentation from a doctor stating the borrower is able to work and earn money prior to guaranteeing any new loans if the borrower has prior loans granted a final discharge due to total and permanent disability. In addition, the guarantor must also obtain the borrower's acknowledgement as required in 34 CFR 682.201(a)(6)(ii) prior to guaranteeing a new loan. If the borrower then becomes permanently and totally disabled again after receiving the new loan, guarantors receive a new TPD discharge form and the determination for conditional discharge is based on that documentation. The FFEL community finds no regulatory or statutory basis for requiring this information and as such, does not support the directive.	Yes  FFEL believes that current regulatory guidance already provides a process for determining borrower eligibility for a new loan when the borrower applies for a new loan after previous loans have already been discharged. Lacking any concrete examples of this issue, FSA agrees but reserves the right to revisit at a later date.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
7	Loans received after a prior TPD discharge.	Contact the physician who certified the current TPD application to confirm that the borrower's disabling condition had previously improved to the point that he could work and earn money but later deteriorated again to the point of TPD. Explanation and full documentation must be attached. [6/28/04 e-mail]	This requires new documentation from a doctor who may or may not have been involved in either the prior disability application or in the certification necessary for the borrower to become eligible for new loans. If the borrower had a prior loan discharged due to TPD, then applied for and received a new loan, all of the required documentation would have been obtained in order to guarantee the new loan. There is no need to go to the current certifying physician to obtain any further documentation, as this adds no value to the process. The FFEL community finds no regulatory or statutory basis for requiring this information and as such, does not support the directive.	Yes FFEL believes that current regulatory guidance already provides a process for determining borrower eligibility for a new loan when the borrower applies for a new loan after previous loans have already been discharged. Lacking any concrete examples of this issue, FSA agrees but reserves the right to revisit at a later date.
8	Supporting documentation for changes made by the physician to dates on TPD application.	A signed letter or fax from the physician confirming the change and the reason for the change as well as a clear summary of any telephone conversation with the physician confirming the change and the reason for the change, including the full name of the individual who applied the change to the TPD application. [7/26/04 e-mail]	If the certifying physician initials a change, the form should be considered complete. Requests for additional documentation from the CDD Unit regarding the change should not be required.	Yes FFEL and FSA agree to require that all changes to the form be initialed by the physician, with the following exceptions: 1) Any changes in the Demographic section of the form do not need to be initialed. In addition, should either the borrower's address or phone number(s) be omitted from this section, the form can be accepted without that information; 2) If the "Date the borrower became unable to work and earn money" field is altered, no initials are required; however, supporting documentation from the doctor explaining the reason for the alteration to this field is required.
9	Supporting documentation for changes made by the physician to dates on TPD application.	Initial should appear immediately next to the added or amended information. [7/26/04 e-mail]	The FFEL community will ensure that the physician's initials are in close proximity to the line item in which the change is made. However, we do not support the automatic rejection of a TPD Discharge application form merely because the doctor's initials are not immediately next to the change. We expect the CDD Unit to be able to allow some flexibility in this situation as it is difficult to ensure that the physician's initials are immediately next to the change. We do not believe a borrower should be denied the conditional discharge merely because the physician initialed a change outside the preferred parameters.	Yes FSA agrees to allow the requested flexibility.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
10	Supporting documentation for changes made by the physician to dates on TPD application.	The initials should clearly belong to the physician. If there is "reasonable doubt" attach a signed letter or fax from the physician verifying the changes. [7/26/04 e-mail]	The FFEL community agrees that initials in close proximity to alterations on the form should clearly belong to the physician certifying the condition. Lenders and guarantors will ensure that, in their opinions, there is no "reasonable doubt" that the initials are those of the physician. Once that has been done, those loans that are eligible for conditional discharge will be assigned to the CDD Unit. If the CDD Unit then believes there is reasonable doubt the initials are those of the physician, the FFEL community requests that the CDD Unit follow up with the physician. We believe this is a much more efficient process than returning the file to the guarantor, which only further delays the eligibility determination for the borrower.	Yes  Discussion was held and agreement was reached that, as long as the initials match the doctor's and the alteration is NOT the 'unable to work' date, there is no need to get additional documentation regarding the alteration. If alterations are made to the 'unable to work' field, see Issue 8 of this matrix.
11	Effective date.	Instructions in July 26 e-mail are implemented as of September 1, 2004. [7/26/04 e-mail]	Using a triggering event of loans received by the Department effectively establishes a retroactive implementation, as the normal process requires the loan holder to receive the discharge application, review it, pull the collateral and forward to the guarantor. The guarantor then reviews to ensure discharge eligibility, contacts the physician as necessary and, after claim payment is issued and NSLDS updates are completed, forwards to the Department. This process takes several weeks to complete. By using a triggering event based on receipt by the Department, loans currently "in the pipeline" are adversely affected. In addition, sufficient time is needed for guarantors to publish the new operational procedures and for loan holders to implement operational changes. The FFEL community recommends that the triggering event for enforcement of this guidance be defined as "discharge requests received by the loan holder on or after March 1, 2005".	Yes  FFEL and FSA agree that any new requirement will be effective for loans assigned by guarantors 120 days or more after issuance of the revised guidance.  For example, if a new requirement is issued on July 5, 2005, the 120th day is November 2. Any files that are submitted by a guarantor to the CDD Unit prior to November 2 would not be required to comply with the new guidance and therefore FFEL would not expect to see any loans submitted prior to November 2 returned for failure to comply with that new guidance. However, any files submitted by a guarantor on or after November 2 would fall under the revised guidance issued on July 5. Also, files first submitted prior to November 2 but returned by the CDD Unit and resubmitted by a guarantor on or after November 2 must also meet the new requirement.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
12	TPD discharge application signed by borrower's representative.	Applications that have been signed by a borrower's representative, but not the borrower, should be accompanied by documentation of the representation. Documentation of the borrower's representation may include a statement signed by the borrower authorizing representation or legal documentation, such as Power of Attorney, of representation. [10/28/04 e-mail]	The TPD discharge application (OMB 1845-0065) provides for the signature of a borrower representative in cases where the borrower is unable to sign the form, as does 34 CFR 682.402(c)(2). The intent of this provision is to provide relief to those borrowers unable to sign on their own behalf. To require a statement authorizing the representation that is signed by the borrower is illogical. Also, there is no requirement on the TPD application or in regulations to submit legal documentation, such as a power of attorney. The FFEL community finds no regulatory or statutory basis for requiring this information and as such, does not support the directive.	Yes  FFEL and FSA agree that FFEL participants do not need to obtain proof that the borrower's representative has the authority to sign on the borrower's behalf.  FSA indicated they are concerned that a doctor may not provide medical information when the borrower's representative signs the form rather than the borrower. However, this has not been a problem yet, so they will monitor the situation and if needed, they will pursue a change to the form instructions to require such documentation.  If CDDU attempts to get additional information from the physician and is denied due to lack of this documentation, CDDU will contact the borrower to obtain this documentation.
14	Bankruptcy documentation received after assignment to the CDD Unit.	The FFEL community wishes to insure that bankruptcy notifications are processed in a timely manner and that we are forwarding bankruptcy information on assigned TPD loans to the correct individual.	Guarantors must forward bankruptcy documentation to the CDD Unit when assigning loans to the Department, or for those loans already assigned, immediately upon receipt regardless of whether the loan assignment is accepted. Since the loan is assigned to the Department, the Department is the holder of the loan and is the only entity that can file a proof of claim or meet court established deadlines to protect the federal fiscal interest. The FFEL community requests that the CDD Unit designate a point of contact to both handle assignments that include bankruptcy documents, and to process newly received bankruptcy documentation so that proofs of claim may be filed and all court established deadlines can be met in a timely manner.	Yes  Agreed that the guarantors need to submit the bankruptcy documentation at the time of loan assignment to the CDDU. If the bankruptcy documents are received after the assignment, the guarantor needs to send the documents to Lynn Force.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
17	Eligibility determination.	Eligibility for discharge is determined at the borrower level.	Regulations currently allow a borrower to receive new loans after prior loans have been discharged due to total and permanent disability. The borrower becomes eligible for new FFEL loans upon obtaining a doctor's certification that he or she is once again able to work and earn money and the borrower acknowledges that the new FFEL loan may not be eligible for discharge in the future on the basis of any impairment present when the new loan is made unless that impairment substantially deteriorates. This language clearly allows for new loans after the final discharge of prior loans. Therefore, the FFEL community maintains that eligibility for discharge is granted at the loan level. Please refer to 34 CFR 682.201(a)(6).	Yes  FSA concurs. Eligibility is determined at the loan level, e.g. if a loan is made prior to the date the borrower became unable to work and earn money, and another loan is made after that date, and the borrower otherwise meets all discharge criteria, the loan made prior to the date the borrower became unable to work and earn money would qualify for discharge.
18	Status updates for assigned loans.	Updates from the CDD Unit concerning the disability status (i.e. conditional, final, or ineligible) of assignments do not include all loans assigned for some borrowers.	<p>Guarantors may not always assign all the loans applicable to a discharge at one time. The CDD Unit should provide in their correspondence to a guarantor an identifiable "Loan ID" for each loan assigned. This ID can include the disbursement date(s) and loan amount for each loan on that piece of correspondence. This will allow the guarantor to update the status of the specific loan referenced in the correspondence. It is difficult to determine which loans are identified in the correspondence from the CDD Unit as noted in the following examples:</p> <p><b>Example 1:</b>            Loan Disbursed 08/02/1999 \$2500 assigned 04/14/2003            Loan Disbursed 09/23/2000 \$2625 assigned 07/19/2003            CDD Unit correspondence dated 08/28/2003 provides conditional discharge ineligibility for Loan ID 111111FF001            and no other correspondence is received by the guarantor.</p> <p><b>Example 2:</b>            Loan Disbursed 08/20/1999 \$2625 assigned 06/28/2004            Loan Disbursed 09/21/2000 \$2625 assigned 06/28/2004            Loan Disbursed 10/15/2001 \$2625 assigned 06/28/2004            Loan Disbursed 09/10/2002 \$2625 assigned 07/24/2004            CDD Unit correspondence dated 09/24/2004 provides conditional discharge eligibility for:</p>	Yes  FSA stated this is a 'future-state' change, that they cannot provide loan level information to guarantors relative to which of the borrowers' loans have been accepted. FSA/CDD needs to look at what they can do in the meantime to help GAs recognize what loans CDD is referring to when they send status updates on assigned loans. One helpful suggestion is for the GAs to follow up with the CDDU to verify individual loan statuses. In addition, borrowers can contact the CDDU at 1-888-869-4169.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
			Loan ID 11111111FF001	
			Loan ID 11111111FF002	
			CDD Unit correspondence dated 10/05/2004 provides conditional discharge eligibility for:	
			Loan ID 11111111FF001	
			Loan ID 11111111FF002	
			Loan ID 11111111FF004	
			No other correspondence is received by the guarantor.	
13	The date of disability falls between disbursement dates of a loan.	The loan is not dischargeable because the loan has not been fully disbursed prior to the date of disability.	<b>34 CFR 682.402(c)(iii), clearly states that determination of discharge eligibility must be made based on whether or not a condition existed "at the time a loan is made". The FFEL community understands the term "at the time the loan was made" to be synonymous with the date of the first disbursement. The FFEL community respectfully maintains that the CDD Unit's interpretation of the term "at the time the loan was made" is inconsistent with the traditional usage of the term throughout federal regulations, and therefore eligibility should be based on the date of first disbursement.</b>	No  The FFEL community maintains that the CDDU's interpretation of the term 'at the time the loan was made' is not consistent with the traditional usage of the term throughout the federal regulations, and therefore eligibility should be based on the date of the first disbursement. FSA concurs that the rule in place today is inconsistent with the regulations but is not going to change this rule at this time. FSA believes that if a borrower accepts the 2nd (or a subsequent) disbursement and this disbursement is after the date the borrower became unable to work (the disability date), that this is a disqualifying factor. However, if the 2nd or subsequent disbursement is cancelled, this is no longer an issue. The FFEL community remains concerned with FSA's acknowledgment that the rule is inconsistent with regulations.

Shaded = agreement reached  
 Bold = outstanding policy issues

#	Issue	Directive/Issue	Recommendation	FFEL/FSA Resolution?
15	Assignment of e-signed promissory notes.	Private guidance indicates that the CDD Unit currently does not have procedures in place for accepting assignment of such loans.	The FFEL community wishes to insure that procedures are in place for the assignment of loans with electronically signed promissory notes. FFEL guarantors have procedures in place for the claim purchase of e-signed loans and the assignment process to the CDD Unit should not present any additional obstacles.	Partial  This issue is resolved from the perspective that FSA agreed to accept a paper copy of an e-signed note. The remaining outstanding issue is whether or not the paper copy needs to be stamped as true and exact.
16	Communication of procedural changes.	Changes to TPD assignment procedures are sent to the community via e-mails.	We appreciate the Department's use of e-mail to share procedural changes in the assignment process as well as policy clarifications. However, a formal Department communication procedure should be established to circulate changes in the TPD assignment process in the same manner as any other policy or procedural change, such as a Dear Partner letter.  While the FFEL community does appreciate the flexibility of individual e-mails when resolving issues with specific loans or to provide clarification regarding CDD procedures, we are concerned that policy changes are distributed in this format. We have seen examples of e-mails used to report what appears to be a statement of CDD procedure when, in fact, it is a policy change that affects current law and/or regulations. In addition, using e-mails to publish such notifications creates the possibility that all guarantors, lenders and servicers may not receive timely notice.	No