

Total & Permanent Disability Outstanding Industry Issues: DCL GEN-02-03 Implementation / Triggering Event

Q1. What is the actual triggering event for implementation of the new rules?

*Current rules continue to apply for disability determinations made by the loan holder prior to July 1, 2002. The new regulations apply to all disability determinations made by the loan holder on or after July 1, 2002. In the case of a loan held by a lender, the lender must make its determination and **clearly identify** the determination date on the disability form when the disability claim is submitted to the guarantor to ensure that loans for which a disability determination was made prior to July 1 will be paid as a "final" discharge. Please refer to the triggering event document developed by the industry for a more detailed explanation of the transition to the new regulations.*

Preliminary Determination Letter

Q2. DCL, Section III: The DCL states, "the loan holder must, in the preliminary determination letter, inform the borrower that the regulations governing disability discharges have changed and explain the new total and permanent disability eligibility criteria and discharge process." It is our understanding that the Supplemental Information Sheet was designed for use in conjunction with the current form to disclose this information to the borrower. If the lender sent the Supplemental Sheet with the current application form, do they have to re-disclose this information? If so, can they use the Supplemental Sheet?

The Supplemental Information Sheet was not developed as a notification letter, but rather was designed for use with the current disability form to outline changes in the disability process. After the disability claim has been paid, the lender has certain notification requirements such as advising the borrower that the loan will be referred to the Department (§682.402(c)(8)) and informing the borrower that the Department will be requesting information on employment income during the conditional discharge period (DCL GEN-02-03, Attachment 2, Section (I)B.2.) These disclosure requirements apply regardless of which discharge form is used and whether or not a Supplemental Information Sheet was provided to the borrower. The Supplemental Sheet, as a stand-alone document, would not meet all of these requirements. However, the Supplemental Sheet could be used in conjunction with a letter to provide all of the required information to the borrower.

Discharge Review

Q3. DCL, Section IV: ED expects loan holders and guaranty agencies to conduct rigorous evaluations of disability discharge requests by following the guidance provided in DCL 99-G-324. The DCL also states loan holders may want to seek the assistance of a qualified physician. Does this mean that new or different review procedures are now required?

No. Loan holders and guarantors should already be following the guidance from the 1999 DCL. The 2002 DCL does not require more stringent review procedures, nor does it allow for more lenient review procedures. Instead, the DCL simply reiterates the guidelines described in DCL 99-G-324. As long as the loan holder or guarantor is complying with the regulations and the previous DCL guidance, no change should be needed to the review procedures.

Contact Information for Borrowers' Use

Q4. Attachment 2, Item (I) B.2.: The DCL requires the loan holder to notify the borrower that the loan will be assigned to the Department of Education for review. To prevent calls in to the lender on - 1 - June 20, 2002 the status of the Department's review, it would be beneficial to have a phone number that the borrower should use if he has any questions.

The Department has indicated that a toll-free number, 1-888-636-6401, will be activated on July 1, 2002. It should be noted, however, that in all cases there will be a "lag time" while the

guarantor is filing for reinsurance and waiting for reinsurance to be paid during which no one will have any updated information to provide to the borrower. During this time, referring the borrower to the Department's Disability Discharge Operating Unit will likely only cause frustration to the borrower because the Operating Unit will not have received the loan assignment and will therefore be unable to address any questions. According to the procedures outlined in Attachment 3 of the DCL, the Operating Unit will send a letter to the borrower advising of the disposition of their review and providing a phone number to use if borrower has questions. Until such time as the borrower receives notification from the Operating Unit, lenders and guarantors should reassure the borrower that the loan has been assigned to the Department, the Department will notify the borrower of the results of their review, and that no payments are required until and unless the Department instructs them otherwise.

Suspension of Other Activities

Q5. Attachment 2, Item (II) A.: If a borrower is in an active bankruptcy status when the guarantor assigns the loan to the Department as the result of determining the borrower is eligible for conditional discharge due to total and permanent disability, must the guarantor also assign the Proof of Claim (POC) to the Department?

Yes. If a POC was filed with the bankruptcy court and the bankruptcy case is still active, the guarantor must assign the POC to the Department. Documentation of such assignment must be submitted to the Department's Disability Discharge Operating Unit.

Assignment Process

Q6. Will the assignment process for disabilities require data to be submitted at loan level or at claim level? If the assignment process requires data to be sent at loan level and the information regarding payments received after the date of disability is reported at claim level, how do we determine the break down of payments applied to each loan?

When we assign (subrogate) defaults to ED today, we provide payment history information showing all payments received and applied to all defaults held by the guarantor. They are not broken down by individual loan. We need to treat loans assigned for disability the same as we do for other loans that are assigned.

Q7. In the case of an electronic assignment file, must the paper file documentation accompany the tape, or can it be sent subsequently in a separate mailing?

In the current assignment process, the guarantor submits the electronic file to ED, the file is edited and ED contacts the guarantor to request that we send the paper file documentation. The same process that exists for assignment today should be used for these assignments in the future. It was not the intent to create a new assignment process.

Credit Bureau Reporting

Q8. Attachment 2, Item (II) F.: It is our understanding that Metro 2 formats no longer use the "88" code. Instructions for Metro 2 format are needed.

According to the CDIA Metro2 members only section, the Account Status of "88" is a valid status code which denotes "Claim filed with government for insured portion of balance on a defaulted loan." Therefore it does exist, albeit as a negative Account Status.

Outstanding Industry Issues - 2 - June 20, 2002 developed by the TPD Implementation Workgroup

Outstanding Industry Issues - 3 - June 20, 2002 developed by the TPD Implementation Workgroup

NSLDS Reporting

Q9. Attachment 2, Item (II)G. seems to require that the NSLDS reporting for claims paid must be delayed until “receipt of a disability reimbursement payment”. Why does NSLDS reporting need to be held up at the guarantor until receipt of this payment? Is “reimbursement payment” the same as receipt of reinsurance?

The term “reimbursement payment” is referring to the reinsurance payment. This section of the DCL is trying to clarify that, after the receipt of the reinsurance payment, the guarantor will continue its current practice of reporting the “0” balance when it reports the receipt of reinsurance. NSLDS reporting does not have to be suspended until the disability reimbursement payment is received. The guarantor is expected to continue its current reporting practices (i.e., reporting to NSLDS when the claim is paid, and again when reinsurance is received), with an additional step of reporting the transfer to ED’s Disability Discharge Operating Unit after it reports the receipt of reinsurance and assigns the loan.

Copies of Notification Letters

Q10. Attachment 3, Items (I) A. & B., Items (II) B. & C.: The Department will copy the previous loan holder on the letter to the borrower advising of approval or denial of conditional discharge, which will include a contact number at the Department. However, in all cases, the previous holder would be the guarantor. If the guarantor has the contact number, should the lender advise the borrower to contact the guarantor for information on the status of the loan prior to the borrower receiving a copy of the letter?

As noted in an earlier question, there will be a “lag time” while the guarantor is filing for reinsurance and waiting for reinsurance to be paid during which no one will have any updated information to provide to the borrower. Until such time as the borrower receives notification from the Department’s Disability Discharge Operating Unit regarding the disposition of their disability review, lenders and guarantors should reassure the borrower that the loan has been assigned to the Department and that no payments are required until and unless the Department instructs them otherwise.

Q11. Attachment 3, Items (I) A. & B., Items (II) B. & C.: Why will the Operating Unit be sending copies of letters to the prior loan holder? Since eligibility requirements can be reported and viewed on NSLDS, are these letters provided to the prior loan holder so that those entities who do wish to be kept informed can receive this information?

There are some members of the community (including schools, in the case of a Perkins loan) who expressed concerns to the Department about being kept updated regarding the disability status. It would seem that providing a copy of the borrower letter is the Department’s resolution to these concerns. Since there are some entities that do wish to be kept informed regarding the disability status, the Department’s Disability Discharge Operating Unit will likely follow the same processes for all disability loans rather than attempting to develop differing procedures based on whether or not the prior holder wishes to be notified.