

#	Subject	Summary of Change to Common Manual	Type of Update	Effective Date
1286	Administrative Forbearance for Total and Permanent Disability	<p>11.21.R Total and Permanent Disability Figure 11-2</p> <p>Requires the lender to cease collection activity for a period of no more than 120 days when it receives notice from the Department that the borrower has requested a loan discharge application or that the borrower has indicated that he or she intends to apply for a TPD loan discharge. The lender must extend an existing suspension of collection activities, or forbearance, or implement a new period if none exists on the borrower's loan when the lender receives notification from the Department indicating that the borrower has filed the loan discharge application.</p>	Federal	July 1, 2013, for loans for which the Department notifies the lender that the borrower intends to file an application for a total and permanent disability (TPD) discharge or has filed a TPD discharge application.

Batch 194 (Approved)

COMMON MANUAL – FEDERAL POLICY PROPOSAL

Date: April 18, 2013

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	with no changes	Apr 18

SUBJECT: Administrative Forbearance for Total and Permanent Disability

AFFECTED SECTIONS: 11.21.R Total and Permanent Disability
Figure 11-2

POLICY INFORMATION: 1286/Batch 194

EFFECTIVE DATE/TRIGGER EVENT: July 1, 2013, for loans for which the Department notifies the lender that the borrower intends to file an application for a total and permanent disability (TPD) discharge or has filed a TPD discharge application.

BASIS:
§682.402(c)(2); §682.402(c)(8) and (9).

CURRENT POLICY:

Current policy requires the lender to continue collections activity on a loan until it receives the prescribed TPD documentation for claim filing. When the lender receives the appropriate documentation or a request from the borrower's physician for more time to provide that documentation, it must suspend collections activity. Current policy requires the lender to provide up to 60 days of administrative forbearance if the borrower's physician requests additional time to complete the loan discharge application.

REVISED POLICY:

Revised policy requires the lender to cease collection activity for a period of no more than 120 days when it receives notice from the Department that the borrower has requested a loan discharge application or that the borrower has indicated that he or she intends to apply for a TPD loan discharge. The lender must extend an existing suspension of collection activities, or forbearance, or implement a new period if none exists on the borrower's loan when the lender receives notification from the Department indicating that the borrower has filed the loan discharge application.

REASON FOR CHANGE:

Regulatory changes published in the November 1, 2012, *Federal Register*, Vol. 77, No. 212.

PROPOSED LANGUAGE - COMMON MANUAL:

Revise Subsection 11.21.R, page 38, column 2, paragraph 1, as follows:

11.21.R Total and Permanent Disability

If the lender receives information indicating that a borrower intends to file an application for ~~has become~~ totally and permanently disability (TPD) disabled, the lender must direct the borrower to the Department to initiate the discharge application process and continue collection activities until it receives notification from the Department that the borrower intends to file a total and permanent disability discharge application. When it receives the Department's notice that the borrower has made the initial contact with the Department, the lender must suspend collection on the loan for a period of no more than 120 days. If the lender does not receive notification from the Department within the 120-day period that the borrower has filed the discharge application, the lender may treat the period during which it suspended collection as a forbearance and capitalize accrued interest, and must return the loan to repayment. See Section 10.10 for more information regarding permissible capitalization. ~~either the certification of total and permanent disability from a physician or a letter from a physician stating that the borrower has requested the certification and that the physician needs additional time to determine if the borrower is totally and permanently disabled.~~

[§682.402(c)(2)(i)-(iii); §682.402(c)(9)(i)-(iii)]

When the Department receives the documentation necessary to make the TPD determination, it will notify the lender to extend any existing period of suspended collections

or forbearance period or to initiate a new period, as necessary. The period extends until the Department makes the determination regarding the borrower's TPD loan discharge application and notifies the lender of that decision. If the Department denies the borrower's discharge application, then the lender may consider any period of suspended collections to be a forbearance and may capitalize the accrued interest. The lender must return the loan to repayment. If the Department approves the discharge application, the lender must file a TPD discharge claim with the guarantor. See Subsection 13.8.G. [§682.402(c)(2)(vi) and (viii) ; §682.402(c)(8)(ii); §682.402(c)(9)(viii) and (xii)(E)]

~~If the lender receives a written request from the borrower's physician (who is a doctor of medicine or osteopathy and is legally authorized to practice in a state) that additional time is needed either to determine if the borrower is totally and permanently disabled or to complete the borrower's discharge documentation, the lender must grant an administrative forbearance to the borrower and, if applicable, the endorser. This period of required administrative forbearance cannot exceed 60 days from the date the lender receives the physician's request for additional time. The lender may not require the borrower to submit a request for the forbearance. For more information on the suspension of collection activities in the event of the total and permanent disability of a borrower, see Subsection 13.8.G. [§682.402(c)(5)(i)]~~

If a comaker of a joint Consolidation loan or PLUS loan applies notifies the lender that he or she intends to apply for a total and permanent disability loan discharge, the lender must continue servicing the loan for the non-disabled comaker while directing the potentially disabled borrower to the Department. The lender must, at the Department's direction, suspend collection activity on the loan as noted above.

- Comade Consolidation loan
If the Department approves the loan discharge application for a comaker of a joint Consolidation loan, the lender must file the claim with the guarantor for the portion of the loan applicable to the disabled comaker but must return the remaining balance to a repayment status. The lender may capitalize interest that accrued on the remaining balance of the loan during the suspension period. If the Department denies the comaker's discharge application, the lender may capitalize interest accrued while the collection activities were suspended, may consider that period to have been a forbearance, and must return the loan to repayment status.
- Comade PLUS loan
If the Department approves the loan discharge application for a comaker of a PLUS loan, the lender must notify the guarantor. The non-disabled comaker of the loan remains responsible for the entire outstanding balance of the loan and the lender must return the outstanding balance to a repayment status. If the Department denies the comaker's discharge application, the lender may capitalize interest accrued while the collection activities were suspended, may consider that period to have been a forbearance, and must return the loan to repayment status.

For loans processed under rules that require a three-year conditional discharge period, ~~T~~the lender must protect the status of the loan during the conditional discharge period so that the loan does not become delinquent or more delinquent. The lender may apply an administrative forbearance on the entire loan if the non-disabled comaker is not eligible for or does not choose another repayment option, deferment, discretionary forbearance, or reduced-payment forbearance. The administrative forbearance may not begin prior to the date the lender receives the disabled comaker's loan discharge application, or the date the lender receives the notification from the guarantor that one comaker is totally and permanently disabled, whichever is earlier. The forbearance ends on the date that the lender receives notice of the disabled comaker's final discharge determination.

Revise Figure 11-2, page 32, row 6 under Administrative, as follows:

TYPE	LENGTH
Administrative	
...	
Total and Permanent Disability ⁶	<p>Date lender receives physician's written request for additional time to date lender receives a complete, certified loan discharge application or other form(s) approved by the Department, if the borrower submits the certification to the lender within 90 days of the date the physician certified the application, not to exceed 60 days <u>Date the Department includes in its notification to the lender that the borrower intends to apply for a TPD loan discharge application. Forbearance extends for not more than 120 days.</u></p> <hr/> <p>For a non-disabled comaker, the earlier of the date that the lender receives the loan discharge application or the date the lender receives notice from the guarantor that one comaker is totally and permanently disabled, to the date that the lender receives notice of the final discharge determination. <u>Date the Department includes in its notification to the lender that it has received the borrower's TPD loan discharge application and extends until the Department approves or denies the application.</u></p>

PROPOSED LANGUAGE - COMMON BULLETIN:

Administrative Forbearance for Total and Permanent Disability (TPD)

The *Common Manual* has been revised to add new provisions related to the new TPD process. The new processes specify that:

- If the lender receives notice from the Department that a borrower has initiated the process of applying for a total and permanent disability discharge, the lender must suspend collection activity on the borrower's loan(s) for a period - usually referred to as an administrative forbearance - of not more than 120 days while the Department gathers the necessary TPD documentation. The lender may consider that period of suspended collections to be forbearance and may capitalize interest accrued during this period if the borrower fails to provide the necessary documentation to the Department.
- When the Department receives the borrower's TPD documentation, it will provide notice to the lender which will initiate a period or a continuation of an existing period of suspended collections. The lender must maintain the suspension of collections/forbearance until it receives notice from the Department that it has completed its review of the discharge application and made a determination.
- If the loan is made to comakers and one comaker applies for a TPD discharge, then the lender must suspend collections on the loan as directed by the Department until it receives notice of the disposition of the comaker's loan discharge application. In the case of a comade Consolidation loan, the lender must file a claim on the portion of the loan attributable to the disabled comaker when it receives notification from the Department that it approved the TPD discharge application. The lender must then return to repayment any portion of the loan that is not discharged.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:*Student/Borrower:*

The lender will suspend collections on a borrower's loan – often referred to as an administrative forbearance – for the periods necessary for the borrower to submit the loan discharge documentation and/or for the Department to make the necessary determination of the borrower's disabled status.

School:

None.

Lender/Servicer:

A lender must ensure that it has processes in place to suspend collections or administratively forbear the loan, according to the lender's own processes, during both of the periods required in policy, to limit the first period to no more than 120 days, and either to file a TPD claim with the guarantor or to promptly return the borrower to repayment when instructed by the Department.

Guarantor:

A guarantor may be required to amend its policies and program review procedures.

U.S. Department of Education:

The Department must ensure that appropriate notifications are provided to each loan holder.

To be completed by the Policy Committee**POLICY CHANGE PROPOSED BY:**

CM Policy Committee

DATE SUBMITTED TO CM POLICY COMMITTEE:

November 19, 2013

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:

April 11, 2013

PROPOSAL DISTRIBUTED TO:

CM Policy Committee
CM Guarantor Designees
Interested Industry Groups and Others
CM Governing Board Representatives

Comments Received from:

AES/PHEAA, ASA, College Assist, FAME, Great Lakes, HESC, MGA, NCHER TPD Workgroup & Program Regulations Committee, NELA, OCAP, PPSV, SCSLC, SLISA, TG, TSAC, UHEAA, USA Funds, VSAC.

Responses to Comments

Many commenters supported this proposal as written. Two commenters recommended technical corrections that were incorporated without comment. We appreciate the review of all commenters, their careful consideration of this policy, and their assistance in crafting clear, concise policy statements.

Also, some commenters provided updated cite references to support the changing policies in this proposal. The Committee appreciates very much this extra effort to ensure that the Manual remains helpful to its users.

COMMENT:

Several commenters requested that the Committee revise the summary of changes statement in the batch transmittal document and provided several different suggestions for the wording of that statement.

Response:

The Committee appreciates the careful review that many commenters provided with respect to this policy proposal and will ensure that the transmittal reflects a succinct summary of the policy's intent.

Change:

The batch transmittal document will reflect a revised and succinct summary of the policy's intent, drawn from

the revised policy statement in the proposal itself. That paragraph also was the subject of several comments and editorial suggestions, a discussion of which follows below.

COMMENT:

Several commenters provided suggestions and editorial notes related to the content of the revised policy statement, the common bulletin language and the implications statements. While none of these is considered to be a part of the policy language, and will not become part of common policy, the Committee is grateful for the commenters' careful review of the entire policy proposal and their dedication to communicating a consistent and well-considered message.

Response:

Not all commenters provided the same language or suggestions on those non-policy portions of the proposal. The Committee considered each comment individually and in concert with other community suggestions and chose language most in keeping with the intent of the policy change itself, *Common Manual* conventions, and its focus on succinct, plain English.

Change:

The revised policy language and implications statements have been revised based on the various, thoughtful comments received.

COMMENT:

Several commenters suggested changes to revise the language related to the triggering event that drives when lenders begin applying the revised policy. All commenters agreed with the date, and some suggested language that would include in some way, the date that the borrower notifies the lender or loan holder. One commenter suggested that the language should drive from the date of the Department's notification to the lender, to be consistent with §682.402 (c)(2)(ii)(C).

Response:

The Committee chose to use the recommendations that created the simplest triggering event, aligning implementation with when the Department notifies the lender that the borrower intends to apply for or has filed a TPD discharge application. So while this simplified event will include those borrowers who initially contact their lender to discuss or apply for the loan discharge, that initial lender contact has no meaningful bearing on the implementation of the new period of suspended collections activities/forbearance.

Change:

The revised effective date triggers simply from the date of when the Department notifies the lender of the borrower's intention to file the TPD discharge application or that the borrower has filed that application.

COMMENT:

Several commenters made suggestions related to the first paragraph of Subsection 11.21.R. One commenter noted that as written, the policy seems to imply that the lender would need to follow up with the Department to determine if the borrower submitted the completed TPD discharge application within the 120-day period. Other commenters suggested revised language to insert additional flexibility with regard to nomenclature. Those commenters believe that lenders and their servicers should be able to process a "suspension of collections" or a forbearance in the initial phases, depending on their operation and processes.

Response:

The Committee agrees that the Department intends to communicate that the borrower submitted – or failed to submit – the necessary TPD documentation in order for the lender to end the period of forbearance or to extend it to accommodate the processing of the discharge application.

With regard to the language of the text, the Committee believes that there is no meaningful difference between a "suspension of collection" activities and forbearance. For an administrative forbearance such as this describes, that forbearance or suspension does not require a borrower request – thus the "administrative" descriptor – and performs on the loan/account in exactly the same way as any other administrative forbearance period. We note that the description of this policy will fall under the *Common Manual* Section entitled "Administrative Forbearance" and will be reflected on the Claim Form as a period of "forbearance" should the lender file a claim with the guarantor. Thus, so long as the lender treats the period according to federal requirements explicit in those regulations and common policy applicable to the period, including any necessary reporting, guarantors have no meaningful interest in what label the lender or lender servicer appends to its own process.

Change:

The paragraph has been revised to clarify how the lender learns that it must end the period of forbearance/suspension of collection activities by using commenters' suggestions and edits, as follows:

If the lender does not receive notification from the Department within the 120-day period that the borrower has filed the discharge application, the lender must return the loan to repayment. The lender may treat the period during which it suspended collection as a forbearance and capitalize accrued interest. See Section 10.10 for more information regarding permissible capitalization.

COMMENT:

Several commenters noted that there are two potential outcomes of the Department's review of the borrower's TPD discharge application: the denial of the discharge application and return of the loan to repayment and the approval of that application and a requirement that the lender file a claim with the guarantor. The commenters requested that the new second paragraph of this subsection be amended to acknowledge both potential scenarios.

These commenters also reinforced the perspective that the period of suspended collections activities is not called a "forbearance" in regulation but that the lender may retroactively deem that period to have been a period of forbearance and may capitalize accrued interest if the Department denies the TPD discharge application.

Response:

The Committee concurs that two paths logically extend from the Department's review of the discharge application, and that both should be acknowledged in the description of the workflow.

Change:

Text is added to the policy proposal to explain that the lender must file a claim if the Department approves the loan discharge application and to provide a cross-reference to the claim-filing guidance:

... If the Department denies the borrower's discharge application, then the lender may consider any period of suspended collections to be a forbearance and may capitalize the accrued interest. The lender must return the loan to repayment. If the Department approves the discharge application, the lender must file a TPD discharge claim with the guarantor. See Subsection 13.8.G.

COMMENT:

Several commenters suggested changes to Subsection 11.21.R, page 38, column 2, paragraph 2 to clarify the continuing repayment responsibilities of comakers on PLUS and Consolidation loans made to two borrowers jointly. They suggested text to explain that if the Department approves the TPD discharge application, then lender must resume collection activities on the remaining loan balance and must collect from the remaining borrower.

Response:

The Committee concurs that these changes add excellent value to the material.

Change:

The Committee added the language suggested by two of the commenters, but expanded on the formatting by adding bullets to make the material more accessible to the user.

... the lender must continue servicing the loan for the non-disabled comaker while directing the potentially disabled borrower to the Department. The lender must, at the Department's direction, suspend collection activity on the loan as noted above.

- Comade Consolidation loan
If the Department approves the loan discharge application for a comaker of a joint Consolidation loan, then the lender must file the claim with the guarantor for the portion of the loan applicable to the disabled comaker but must return the remaining balance to a repayment status. The lender may capitalize interest that accrued on the remaining balance of the loan during the suspension period. If the Department denies the comaker's discharge application, the lender may capitalize interest accrued while the collection activities were suspended, may consider that period to have been a

forbearance, and must return the loan to repayment status.

- Comade PLUS loan

If the Department approves the loan discharge application for a comaker of a PLUS loan, the lender must notify the guarantor. The non-disabled comaker of the loan remains responsible for the entire outstanding balance of the loan and the lender must return the outstanding balance to a repayment status. If the Department denies the comaker's discharge application, the lender may capitalize interest accrued while the collection activities were suspended, may consider that period to have been a forbearance, and must return the loan to repayment status.

COMMENT:

Two commenters offered proposed edits and revisions to the final paragraph that addresses loans that entered the three-year conditional discharge period following the review of their TPD discharge application.

Response:

The population of borrowers whose loans are governed by these policies continues to decline rapidly. The Policy Committee plans to address all instances of policy related to the conditional discharge period at a future date, in a consistent manner through the body of the Manual.

Change:

No change.

COMMENT:

One commenter noted that the Committee did not attach any adjustments to Figure 11-2, which the commenter believes will be necessary to ensure that the figure remains consistent with the policy text.

Response:

The Committee appreciates the astute review of the proposed policy and agrees that changes to the figure should accompany the policy proposal.

Change:

Figure 11-2 is revised to reflect changes related to the TPD administrative forbearance.

bg/edited-chh