

Common Manual Policy Proposal Batch 213 Transmittal**April 20, 2018**

#	Subject	Summary of Change to <i>Common Manual</i>	Type of Update	Effective Date
1326	Total and Permanent Disability	13.8.G Treatment of Payments The current Manual verbiage is incongruent with the regulations.	Federal	Total and Permanent Disability Discharge Applications received on or after July 1, 2013

Batch 213 (Approved)

COMMON MANUAL – FEDERAL

Date: April 13, 2018

	DRAFT	Comments Due	
	FINAL	Consider at GB meeting	
X	APPROVED	With Changes	04/19/2018

SUBJECT: Total and Permanent Disability

AFFECTED SECTIONS: 13.8.G Treatment of Payments

POLICY INFORMATION: 1326/Batch 213

EFFECTIVE DATE/TRIGGER EVENT: Total and Permanent Disability Discharge Applications received on or after July 1, 2013

BASIS:
§682.402(c)(8)(i)(C)

CURRENT POLICY:
A lender is required to forward to the guarantor any payments made after the lender had received a total and permanent disability claim payment.

REVISED POLICY:
The regulations dictate that after receiving a claim payment, the lender must return to sender any payments the lender received after the date the physician certified the borrower's loan discharge application, or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits, as well as any payments received after claim payment from or on behalf of the borrower. Lenders should not be forwarding payments to the guarantor.

REASON FOR CHANGE:
The current Manual verbiage is incongruent with the regulations.

PROPOSED LANGUAGE - COMMON MANUAL:
Revise 13.8.G, page 51, second column, second bullet as follows:

Total and Permanent Disability Loan Discharge Payment

If the Department determines that the borrower, comaker, or endorser meets the criteria, the Department will advise the lender to file a claim with the guarantor. The guarantor will take the following actions, as appropriate:

...

- If the borrower satisfies the criteria for a total and permanent disability loan discharge, the Department discharges the balance of the loan and the loan holder returns to the person who made the payments any that were received after the date of disability as provided by the Department (on or after date of disability, if based on VA documentation). The discharge and return of payments are made before the loan enters the post-discharge monitoring period.
[§682.402(c)(3)(iii); §682.402(c)(8)(i)(C); §682.402(c)(9)(xii)(D); §685.213(b)(4)(iii)]

Revise 13.8.G, page 52, column 1, paragraph 5 as follows:

If the lender receives a payment from or on behalf of the borrower after ~~the date the physician completed and certified the discharge application notification from the Department of the TPD discharge~~ but before the lender receives the claim payment, the lender must hold the payment. ~~After the lender receives the claim payment, the lender must forward the payment to the guarantor. After receiving the claim payment from the guarantor, the lender must refund to the sender payments received:~~

- After the total and permanent disability date provided in the Department's official approval notification for the standard disability discharge.
- On or after the total and permanent disability date provided in the Department's official approval notification for the veteran disability discharge

[§682.402(c)(8)(i)(C); §682.402(c)(9)(xii)(D); §685.213(b)(4)(iii); §685.213(c)(2)(i)]

**PROPOSED LANGUAGE - COMMON BULLETIN:
TPD Discharge Treatment of Payments**

The *Common Manual* is being updated to align with regulations that require the lender to return to sender payments received after notification from the Department of the TPD discharge, as well as payments received after the lender has received the claim payment.

GUARANTOR COMMENTS:

None.

IMPLICATIONS:

Borrower: A borrower will receive a refund of any payments they made to the lender after the date the physician certified the borrower's loan discharge application or after the date the Secretary received the SSA notice of award to SSDI or SSI benefits, as well as any payments made after claim payment.

School: None.

Lender/Service: Lender/servicers must return any payments to the sender that were made after the date the physician certified the borrower's loan discharge application or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits, as well as any payments received after claim payment.

Guarantor: None.

U.S. Department of Education: None.

To be completed by the Policy Development and Maintenance Contractor (PDMC)

POLICY CHANGE PROPOSED BY:
MOHELA

DATE SUBMITTED TO POLICY DEVELOPMENT AND MAINTENANCE CONTRACTOR:
January 26, 2018

DATE SUBMITTED TO CM GOVERNING BOARD FOR APPROVAL:
April 13, 2018

PROPOSAL DISTRIBUTED TO:
CM Governing Board Chair
CM Guarantor Designees
Interested Industry Groups and Others

Comments Received from:
AES/PHEAA, MDHE, NCHER, PPSVC, TRELIS, UHEAA, VSAC

Responses to Comments

Most commenters support this proposal as written. We thank all commenters for their thorough and thoughtful review.

COMMENT: One commenter questioned whether the Manual should note that lenders never actually see the TPD application, but rather rely on the Loan Holder Notification (LHN) file, which simply provides a TPD date. Lenders have no way of knowing if the date provided in the LHN file is incorrect.

Response: While the PDMC agrees with the commenter's explanation of the process, we believe this level of specificity is at an operational level that the Manual avoids. However, the language suggested by the below commenter, which the PDMC has added, makes clear that the Secretary provides the date that lender/servicers rely on.

Change: None.

COMMENT: One commenter suggested revising the proposed language being added to 13.8.G, page 52, column 1, paragraph 5 as follows:

~~If the lender receives a payment from or on behalf of the borrower after the date the physician completed and certified the discharge application but before the lender receives the claim payment, the lender must hold the payment. After the lender receives the claim payment, the lender must forward the payment to the guarantor.~~

After receiving the claim payment from the guarantor, the lender must refund to the sender payments received:

- After the total and permanent disability date provided in the Department's official approval notification for the standard disability discharge.
- On or after the total and permanent disability date provided in the Department's official approval notification for the veteran disability discharge.

[§682.402(c)(8)(i)(C), §682.402(c)(9)(xii)(D); §685.213(b)(4)(iii), §685.213(c)(2)(i)]

The commenter noted that while an application process based on a physician's certification or receiving SSDI or SSI benefits requires returning payments made *after* the date the physician certified the borrower's loan discharge application or the Secretary received the notice of award for SSDI or SSI benefits, an application based on a determination from the Department of Veterans Affairs requires returning payments received *on or after* the date the Department of Veterans Affairs made that determination. This commenter added additional citations that detail this discrepancy.

Response: The PDMC agrees in part and disagrees in part. The PDMC disagrees with striking the first sentence, as it is a necessary bridge to explain the origin of the payment that the lender may ultimately return to the sender. The PDMC also disagrees with bolding the beginning of each bullet, as this does not comply with the *Common Manual* Style Guide. The PDMC agrees that breaking out the two separate TPD processes and their corresponding timelines is superior to the original proposal. It follows that the PDMC also agrees to include the corresponding citations to the regulations that describe the Department of Veterans Affairs TPD process.

Change: The suggested language and citations were added to 13.8.G, minus the deletion of the first sentence and the bolded timelines after each bullet.

COMMENT: One commenter suggested revising 13.8.G, page 51, second column, second bullet, to include citations to regulations (§682.402(c)(8)(i)(C) and §682.402(c)(9)(xii)(D)) that describe how loan holders other than the Department should treat post-TPD determination payments.

Response: The PDMC agrees.

Changes: The suggested citations have been added.

COMMENT: The same commenter suggested striking all of 13.8.G, page 52, column 1, paragraph 5, as the above cited paragraph on page 51 makes it redundant, and therefore unnecessary. Absent striking the entire paragraph, the commenter suggested that, based on the flow of section 13.8.G, and the inclusion of the phrase "hold the payment," this paragraph appears to be alluding to the treatment of payments the loan holder receives *after filing the discharge claim with the guarantor*. This commenter suggested simplifying the language to reflect this more limited scope, in which case this paragraph would serve as a supplemental operational clarification and not require its own regulatory citations at all. Alternatively, this commenter believed that were the PDMC to keep the current language on page 52, that adding a clause or sentence about the treatment of the payments received during the VA process and the corresponding regulatory citation would be advisable.

Response: While the PDMC agrees that the paragraph on page 51 makes this paragraph appear redundant, we believe completely striking it or limiting its scope is significant enough that it should be handled as a separate proposal to allow for public comment. That said, the PDMC will take the suggestion under consideration and may issue a new proposal in the future. We believe that the changes to the paragraph on page 52 outlined above accommodate the commenter's suggestion to account for the VA TPD process.

Changes: None.

COMMENT: During the Governing Board call, an additional edit was suggested to the first sentence of paragraph 5, column 1, page 52, in section 13.8.G, as follows:

If the lender receives a payment from or on behalf of the borrower after ~~the date the physician completed and certified the discharge application notification from the Department of the TPD discharge~~ but before the lender receives the claim payment, the lender must hold the payment.

The Board approved this change.