



ISSUE
MARCH
2009

Loan Notes

Courtesy of American Education Services

REVISED TOTAL AND PERMANENT DISABILITY DISCHARGE APPLICATION

In *Dear Colleague Letter* (DCL) GEN-09-01/CB-09-01 published on February, 9, 2009, the U.S. Department of Education (ED) announced the approval of a revised Discharge Application for Total and Permanent Disability. On February 27, 2009, ED published DCL GEN-09-02/CB-09-02 which corrected an inadvertent omission in the subject form. Both DCLs are available at www.ifap.ed.gov.

The revised form reflects a new standard, resulting from the Higher Education Opportunity Act (HEOA), for determining that certain veterans are totally and permanently disabled for Title IV loan discharge purposes. Specifically, a veteran who has been determined by the U.S. Department of Veterans Affairs to be unemployable due to a service-connected condition or disability and who provides documentation of that determination will be considered totally and permanently disabled for loan discharge purposes, and will not be required to provide any additional documentation to establish his or her eligibility for discharge. If a veteran qualifies for a total and permanent discharge based on this new standard, there is no applicable conditional discharge period.

ED will issue a separate DCL providing detailed operational guidance on documentation requirements and special procedures for processing total and permanent disability discharge requests from veterans who are covered by this HEOA provision. Other HEOA provisions affecting total and permanent disability discharges require implementing regulations and will, therefore, necessitate further changes to the discharge application at a later date. [See article on Negotiated Rulemaking, Team I, in this issue of Loan Notes.]

The revised Application incorporates changes from the final regulations that were published on November 1, 2007. Additionally, the Physician's Certification section of the form has been significantly revised and expanded to request and to provide space for more detailed information about the applicant's disabling condition.

Beginning July 1, 2009, only the revised form may be provided to borrowers. However, the previous version of the form (expiration date 05/31/08) may continue to be accepted after this date. Program participants are urged by ED to begin distributing the updated discharge application (expiration date 12/31/2011) as soon as possible, given the new discharge standard for veterans which became effective on August 14, 2008.

The updated total and permanent disability discharge application with the 12/31/2011 expiration date is available at the AES website by clicking on "Manage Your Loans" on the home page, selecting "Can't Make a Payment" in the left-hand column, and then clicking on "Permanent Disability", and then selecting the "Permanent Disability Form."

PLUS AUCTION

For loan periods beginning on or after July 1, 2009, schools should **not** certify parent PLUS loans for first-time parent borrowers. A first-time parent borrower is defined as an individual who has never borrowed a parent PLUS loan. Parents who have borrowed PLUS loans on behalf of a dependent student who was/is enrolled prior to July 1, 2009 may continue with their current lender or secure a loan from any eligible FFELP lender. The Auction process only applies to first-time parent borrowers. Grad PLUS loans are not included in the Auction process.

The U.S. Department of Education (ED) has indicated that the results of the PLUS loan auction will be announced at the end of April 2009. If the Auction process, which is a pilot project, is not successful in one or more states, first-time parent borrowers must obtain parent PLUS loans from the PLUS-Lender of Last Resort (LLR) in the state(s). To be selected as a PLUS-LLR, the eligible lender must apply and be prequalified prior to the Auction. If there is no PLUS-LLR lender in a state, first-time parent borrowers in that state may obtain parent PLUS loans through the normal FFELP process. In other words, if the auction is not successful in a school's state, the school may certify parent PLUS loans for first-time parent borrowers through the FFELP process by which the borrower selects his or her lender.



American Education Services

CONTINUATION OF THE HIGHER EDUCATION OPPORTUNITY ACT (HEOA)

This is the third in a series of articles addressing the provisions of the Higher Education Opportunity Act (HEOA), which reauthorized the Higher Education Act of 1965, as amended (HEA). **This third article continues to address statutory changes to Consumer Information as well as the changes in Need Analysis and Student Eligibility that were effective August 14, 2008.** Dear Colleague Letter (DCL), GEN-08-12/FP-08-10, available at www.ifap.ed.gov, also provides a summary of these and other HEOA provisions.

Professional Judgment (Need Analysis)

Examples of special circumstances have been expanded to include nursing home expenses not covered by insurance, unusually high dependent care costs, and a student who is a dislocated worker.

The HEOA also changed the effective date to August 14, 2008 for special circumstances changed by the College Cost Reduction and Access Act (CCRAA). These additional special circumstances are the recent unemployment of an independent student, a family member who is a dislocated worker, and a change in housing status that results in an individual being homeless.

Dislocated worker—when applied to either a student or family member—is defined in section 101 of the Workforce Investment Act of 1998. Homelessness is defined in section 103 of the McKinney-Vento Homeless Assistance Act.

In addition, the HEOA provides new authority for schools to offer a dependent student an unsubsidized Stafford loan if the Financial Aid Administrator (FAA) verifies that the parent(s) has ended financial support and refuses to file a FAFSA. This is not a dependency override. The U.S. Department of Education (ED), in prior guidance, stated that the refusal of a parent to support a student and to complete the FAFSA is not, by itself, sufficient for a dependency override. That guidance remains unchanged.

However, the conditions relating to this new provision include:

- Student must complete and submit a FAFSA that includes all of the required student information and certifications.
- Maximum amount of Title IV aid that the student may receive is the “base” Stafford annual loan amount for the student’s grade level plus the additional unsubsidized amount of \$2,000, e.g., a total of \$5,500 unsubsidized Stafford loan funds for a grade level one student.
- The student may only receive unsubsidized Stafford loan funds, i.e. the student may not receive any other Title IV assistance [e.g., PELL, Academic Competitiveness Grant, National SMART grant, Federal Supplemental Education Opportunity Grant (FSEOG), Perkins, Federal Work-Study (FWS)].
- The FAA must verify that the parent(s) has ended financial support of the student and refuses to complete the parental sections of the FAFSA. This requirement can be met by a signed and dated statement from one of the student’s parents stating that the parent(s) has stopped providing financial support to the student (including the date this occurred), will not provide financial support in the future, and refuses to complete the parental section of the FAFSA. There is no requirement that the parent provide a reason for these statements.
 - » The phrase, “financial support”, includes not only payment by the parent of educational costs, but also other cash and non-cash support to the student such as room and/or board.

Professional Judgment (Need Analysis) continued...

- In the absence of a parental statement (e.g., if the student informs the school that the parent(s) will not provide the required verification statement), documentation from a third party (e.g., teacher, counselor, clergy, court) describing the student’s relationship with his or her parents may be obtained.
- Self-certification from the dependent student is not sufficient.
- A school may, but is not required to, have the student explain how he or she intends to financially support himself or herself without parental support.
- Student’s parent is not eligible to apply for PLUS loan on the student’s behalf.

During recent webinars, ED has provided additional guidance regarding PLUS loans for dependent students who are being considered for professional judgment based on the above authority. If a student’s parents are separated or divorced, and the FAFSA parent (see definition below) refuses to complete the FAFSA, the non-FAFSA parent is not permitted to complete the FAFSA, but he or she may apply for a PLUS loan. However, if that non-FAFSA parent is denied the PLUS loan, the student is not eligible to borrow additional unsubsidized Stafford loan funds available to independent students. For example, a first-year dependent student would be eligible for \$5,500 (\$3,500 unsubsidized base Stafford loan + \$2,000 additional unsubsidized Stafford loan). The student would not be eligible for an additional \$4,000 unsubsidized Stafford loan as a result of a PLUS denial for the non-custodial parent.

(Definition of FAFSA parent: The parent with whom the student lived longer during the 12 months prior to the date he/she completed the FAFSA or if the student lived equally with each parent or didn’t live with either parent, then the parent from whom the student received more financial support during the last calendar year for which it was given.)

Criminal Offenses Reported (Consumer Issues)

The new information that must be added to the annual security report is the following:

- A statement of policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate). **These policies must include the following procedures:**
 - » To immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification at that time will compromise efforts to contain the emergency.
 - » Publicize the emergency response and evacuation procedures on an annual basis to students and staff.
 - » Test emergency response and evacuation procedures on an annual basis.
- Addition of the following to the list of reported crime statistics: larceny-theft, simple assault, intimidation, and destruction, damage or vandalism of property.

The HEOA stipulates that foreign schools are no longer required to collect and distribute a report on campus crime statistics. However, a foreign school must continue to keep a daily crime log and make a timely warning of crimes to the campus community.

(See article on Negotiated Rulemaking in this issue of Loan Notes.)

Missing Person Procedures (Consumer Issues)

A school that participates in any Title IV program and has on-campus housing facilities must establish a missing student notification policy for students who reside in on-campus housing that:

- Informs resident students that they have the option to identify an individual, whom the school may contact not later than 24 hours after the student is determined to be missing according to the school's official notification procedures (see below).
- Provides resident students a method to register confidential contact information in the event that the student is determined to be missing for a period of more than 24 hours.
- Advises resident students who are under 18 years of age, and not emancipated, that the school is required to notify a custodial parent or guardian not later than 24 hours after the student is determined to be missing.
- Informs resident students that the school will notify the appropriate law enforcement agency not later than 24 hours after the student is determined to be missing.
- Requires the school to initiate the student's designated emergency contact procedures if campus security or law enforcement personnel has been notified and has made a determination that the student—who is the subject of a missing person report—has been missing for more than 24 hours and has not returned to campus.
- **Establishes official notification procedures for a missing student who resides in on-campus housing and includes all of the following:**
 - » Procedures for official notification of appropriate individuals at the school that the student has been missing for more than 24 hours.
 - » Immediate referral of any official missing person report relating to such student to the school's police or campus security department.
 - » **If, on investigation of the official report, the police or campus security department determines that the missing student has been missing for more than 24 hours;** the department must contact the individual identified by the student, the school must immediately contact the custodial parent or legal guardian of the student, if the student is under 18 years of age and not emancipated, and if neither of the two previous items applies to the missing student, the school must inform the appropriate law enforcement agency.

(See article on Negotiated Rulemaking in this issue of Loan Notes.)

Ability to Benefit (Student Eligibility)

Students who do not have a high school diploma or its equivalent are eligible to receive Title IV funding upon satisfactory completion of six credits or the equivalent coursework applicable toward a degree or certificate offered by the postsecondary school. Students are ineligible to receive Title IV aid while earning the six credits.

Audit Requirements (Institutional Eligibility)

The HEOA gives the authority to ED to modify the audit requirements for foreign schools. However, any modifications must be made through regulations.

ED also has the authority, as a result of the HEOA, to waive the financial and compliance audit requirements for foreign schools that receive less than \$500,000 in FFELP funds during the award year preceding the audit period. If a decision is made to exercise this waiver authority, schools will be notified by ED.

Proprietary Institutions and the 90/10 Rule (Institutional Eligibility)

The HEOA moves the 90/10 Rule for a proprietary school from institutional eligibility to the Program Participation Agreement (PPA). As a result, a school that violates the Rule—for one of the school's fiscal years—would no longer lose its eligibility to participate in Title IV programs. However, the school's participation would become provisional for two of the school's fiscal years after the fiscal year in which the school failed to meet the requirements of the Rule. If the school does not satisfy the Rule for two consecutive school fiscal years, the school then loses its eligibility to participate in Title IV programs for at least two school fiscal years.

In addition, the HEOA made changes to the calculation for the 90/10 Rule.

Drug and Alcohol Prevention (Institutional Eligibility)

The HEOA requires that schools, as part of the biennial review, determine both of the following:

- The number of drug and alcohol-related violations and fatalities that occur on campus, or as part of any school activity, and are reported to campus officials.
- The number and type of sanctions that are imposed by the school as a result of drug and alcohol-related violations and fatalities that occur on campus, or as part of any school activity, and are reported to campus officials.

In the next issue of *Loan Notes*, the focus will move to loan and lender issues that are currently effective as a result of the HEOA.

NEGOTIATED RULEMAKING

In the *Federal Register*, Vol. 73, No. 251, dated December 31, 2008, the U.S. Department of Education (ED) announced its intention to establish five committees for the purpose of negotiating the text of the regulations developed in response to the statutory changes resulting from the Higher Education Opportunity Act. **These five committees are listed on the following page, under Negotiated Rulemaking.**

Team I discussions will focus on prohibited inducements, PLUS loan deferments and interest capitalization, borrower eligibility for an in-school deferment, notifications to the borrower when the transfer, sale or assignment of a loan results in a change in the party to whom payments must be sent, applicability of the Servicemembers Civil Relief Act to FFELP borrowers, teacher loan forgiveness and total and permanent disability, among other subjects.

Team II is focusing its discussions on the Code of Conduct, private education loan certification, entrance and exit counseling, preferred lender lists, public service cancellation, calculation of the cohort default rate, institutional eligibility, and default prevention plans, among other subjects.

Team V is discussing topics that are addressed in this issue of *Loan Notes* (e.g. missing person procedures, emergency response and evacuation procedures, hate crime reporting) along with topics addressed in recent issues of *Loan Notes* (e.g. fire safety standards and measures, peer to peer file sharing/copyrighted materials).

As a result of these discussions, notices of proposed rulemaking will be published this summer. These notices will include ED's proposed regulatory changes for the subjects under discussion. It is anticipated that the final regulations will be published no later than November 1, 2009 and implementation of the final regulations will occur no later than July 1, 2010.

SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS FOR THE QUARTER ENDING DECEMBER 31, 2008

Please note: The applicable Special Allowance Rates for Consolidation loans and for loans made or purchased with tax-exempt funds are available at www.ifap.ed.gov.

The Treasury Bill (T-bill) rate for the quarter ending December 31, 2008 averaged .35%. No loans, made or purchased with taxable funds, in the categories of SA, SB, SD, SE, SG, SJ, and SK, will receive Special Allowance payments.

In the absence of a daily Commercial Paper (CP) Rate during 33 business days in the quarter, the U.S. Department of Education (ED) used the 3-month rate published, beginning on October 27, 2008, by the Federal Reserve in the Commercial Paper Funding Facility. Prior to October 27, 2008, ED used the previous day's CP Rate when a daily CP Rate was not available.

The CP Rate for the same quarter averaged 2.58%. When the special allowance formula results in a negative rate on a loan first disbursed on or after April 1, 2006, the lender must remit the excess interest to the U.S. Department of Education.

Loan Interest Rate	Special Allowance Annual Rate+	Special Allowance Quarterly Rate+	LaRS (Lender Reporting System) Part III: Special Allowance Category Column E*
3.61%	.71%	.1775%	CA
4.21%	.71%	.1775%	CB
5.01% (PLUS)	.21%	.0525%	CD
3.61% 6.80%	.71% (2.48%)	.1775% (.62%)	CE
4.21% 6.80%	.71% (1.88%)	.1775% (.47%)	CF
5.01% (PLUS) 8.50% (PLUS)	.21% (3.28%)	.0525% (.82%)	CH
6.00% 6.80%	(2.23%) (3.03%)	(.5575%) (.7575%)	CI
6.00% 6.80%	(1.63%) (2.43%)	(.4075%) (.6075%)	CJ
8.50% (PLUS)	(4.13%)	(1.0325%)	CM

* For a detailed explanation of the Special Allowance codes, please visit the Common Manual at aesSuccess.org. To access the Manual, click on 'Solutions for Lenders' on the left-hand side of the screen. Then click on 'Access financial aid publications' under the heading 'More Lender Solutions,' which is located in the middle column on the screen. Then select the Common Manual. The Special Allowance codes are located in Appendix A, figure A-5.

+ For entities approved as not-for-profit holders, Special Allowance payments will be based on another code that ED sets in the respective demographic profiles. Please see the March/April 2008 issue of Loan Notes for more information.

NEGOTIATED RULEMAKING

(Continued from page 3)

Regulation Committees

Team I
Loans (Lender or general loan issues).

Team II
Loans (School-based loan issues).

TEAM III
Accreditation.

Team IV
Discretionary Grants.

Team V
General and non-loan program issues.

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