

Discharging Student Loans Due To Disability

This packet contains general information about discharging student loans due to a severe disability. Advice from an attorney is your best source of information about your specific problem. If you are unable to afford the services of an attorney you can contact CLEAR at 1(888) 201-1014 for information on your specific situation. The CLEAR intake line is a legal hotline for low-income persons. CLEAR provides limited advice and referrals, if available.

Am I Eligible For A Discharge Of My Student Loan If I have A Severe Disability?

Yes, you may be eligible for a discharge if:

1. You have a disability that permanently prevents you from working; **and**
2. Your disability started or substantially worsened after you took out the student loan; **and**
3. Your loan is a Direct Federal Student Loan, Federal Family Education Loan or Perkins Student Loan.

How Do I Apply For A Discharge?

To apply for a loan discharge you must fill out a Loan Discharge Application. We have provided a discharge application at the end of this packet.

You fill out sections 1 and 2 of the application and your doctor fills out section 3 of the application.

Fill out the application completely and carefully. Make sure your handwriting is easy to read. If you forget to answer a question or if the department cannot read your application, the Department will refuse to process your application and will continue attempts to collect on your student loan. Remember to sign and date your application.

On the application form, your doctor (either a doctor of medicine or osteopathy) must certify that you are unable to work and earn money due to an illness or injury that is expected to continue indefinitely. If your doctor will not make this certification, then the department will probably deny your application.

Make sure that the information your doctor provides fully explains your condition and why your condition leaves you unable to work.

When both you and your doctor have completed the discharge application, send your completed application to your loan holder (i.e. the creditor you owe money to) for processing.

What Happens Next?

Once the loan holder receives your application, it will review the application and it will check your work and your student loan history to determine if you qualify for a discharge. If the loan holder determines that you qualify, then it will turn your loan over to the Department of Education for further review. The Department will have its medical professional evaluate your disability application to make sure it meets the Department's strict standards.

Before making its decision on your application, the Department may request additional information about your health. Once the Department receives all of the necessary information, it will review your application materials and make a decision on your case. The Department can decide to reject your application, give you a conditional loan discharge, which is the first step towards a final loan discharge, or grant you a final discharge.

What Happens if the Department Rejects My Discharge Application?

If the Department rejects your loan discharge application, then the department will return your loan to its prior status and the department will resume collection activity. If the department denies your application, you should review your loan discharge application to make sure you fully completed the application and presented all relevant information in your application. If you find that you did not fully complete the application, if you left out important information, if you have additional medical proof of your condition or if your circumstances have changed, then you should submit a revised and completed application for the Department's review. If the Department still denies your application after you resubmit it, or if you submitted a fully supported and complete application initially, then you can seek judicial review to challenge the Department's decision. Contact an attorney to find out if seeking judicial review is advisable in your situation. If you are low income contact CLEAR for such advice.

What Happens If The Department Determines That I am Disabled?

If the Department decides that you do meet their disability standards then it will send you a letter that says you qualify for a conditional discharge or a final discharge. The Department will grant you a conditional discharge if your doctor certified that your disability began less than three years from the date of your discharge application. If your doctor certified that your disability began more than three years before the date of your discharge application then the Department should grant you a final discharge based on your application.

If the Department grants you a conditional discharge then the Department can take away your discharge and reinstate collection activity on your account at any time during the three-year conditional period, if:

1. Your health improves so that you are no longer totally and permanently disabled;
or
2. You work and earn too much money to be considered permanently disabled; or
3. If you return to school.

The conditional period begins on the date that your doctor certified your condition began and the period will last for 3 years after that date. Once the department grants you a conditional discharge, then you are allowed to stop making payments on your student loan without risking default (note that if you are already in default when you apply for the loan discharge, your loan may stay in default during the conditional period). The department will stop all collection activity, which will not start up again unless it determines that you are no longer disabled under their definition.

If the Department grants you a final discharge, then you should not have a conditional waiting period and the Department should issue a final decision that discharges your obligation to repay your loans. Once this happens then the Department, your loan holder and collection agencies should stop all collection activity for your loan. If you made any payments on your loan after the date that you were certified totally and permanently disabled, then the department will return those payments to you.

What Happens During The Conditional Period?

During your conditional period, the department will monitor your disability status and your ability to work. If you work during the conditional period, then you must report any earnings that are above 100% of the Federal Poverty limit for a family of two (\$12,830.00 per year for 2005 for the lower 48 states) to the Department. If your annual employment earnings do not exceed the limits mentioned above, and if you do not receive any new student loans during your conditional period, then the Department may permanently discharge your loan. If your earnings exceed the limits mentioned above, or if you took out any new student loans during your conditional period, then you will not qualify for a discharge. There is only one, very limited exception to the no new student loan rule that involves taking out a Federal Direct or FFEL Consolidation Loan. Contact an attorney or CLEAR for more information about this exception.

What Happens If I am Still Disabled At The End Of The Three-Year Conditional Period?

If at the end of the three year period you are still eligible for the discharge, then the Department will grant the final loan discharge and you will not be responsible to pay on the loan anymore. If you made any payments on your loan after the date that you were certified totally and permanently disabled, then the department will return those payments to you.

What Happens If The Department Determines That I am No Longer Disabled During Or At The End Of The Three-Year Conditional Period?

If at the end of the three year period or anytime during the three year period the Department finds that you are not totally and permanently disabled, then the Department will not discharge your loan and the Department will start attempting to collect on the loan again. If this happens to you, you will not be required to pay the interest that accrued on your loan during the conditional period.

Am I Eligible For A Discharge If My Spouse And I Consolidate Our Loans Together?

When borrowers consolidate their loans either on their own or with a spouse, they give up some rights with respect to the loans. We encourage you to seek legal advice before you consolidate your loans so you understand how the consolidation will affect your rights in your particular situation. Consolidation loans can be discharged only if you meet the conditions for discharge for each underlying loan.

The Department may grant a loan discharge for joint consolidation loans (consolidation loans in which both you and your spouse consolidate your student loans together into one loan), if both borrowers meet the criteria for a total and permanent disability discharge. If only one borrower qualifies for a total and permanent disability discharge then the

Department may grant a partial discharge of the consolidation loan. Even if the disabled borrower's portion of the consolidation loan is discharged, both borrowers remain jointly and severally liable for the balance of the consolidation loan. This means that if the non-disabled borrower defaults on the consolidation loan, the lender can go after both the non-disabled and the disabled borrower to collect payment on the loan.

What Can I Do If I Do Not Qualify For A Student Loan Discharge But I am Unable to Repay My Loans?

If the Department rejects your discharge application or if you have read through this packet and determined that you will not qualify for a discharge but you are still unable to repay your loans please look at our other student loan packets. Our other packets provide general information about what to do when you cannot afford to repay your loans such as other loan discharges (including bankruptcy), postponing repayment, and consolidating your loans so you can try to get a lower monthly payment amount. Our other packets also discuss what steps the Department or your loan holder can take against you if you stop paying on your loan. If you have questions about your specific situation, contact an attorney for advice or contact CLEAR if you are low-income.

Additional Information

If you would like more general information about student loans the Federal Student Aid website has information about applying for and repaying student loans. Their web address is <http://studentaid.ed.gov>

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, February 2006.

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SECTION 4: INSTRUCTIONS FOR COMPLETING THE FORM

Type or print in dark ink. A representative may sign on your behalf in Section 2 if you are unable to do so because of your disability. Have Section 3 completed and signed by a doctor of medicine or osteopathy. **If you are applying for discharge of more than one loan and your loans are held by more than one loan holder, you must submit a separate discharge application (original or copy) with any accompanying attachments to each holder. A "copy" means a photocopy of the original form completed by you (or your representative) and your physician. If you submit copies, each copy must include an original signature from you or your representative.**

SECTION 5: DEFINITIONS

- The **Federal Family Education Loan (FFEL) Program** includes Federal Stafford Loans (both subsidized and unsubsidized), Federal Supplemental Loans for Students (SLS), Federal PLUS Loans, and Federal Consolidation Loans.
- The **Federal Perkins Loan (Perkins Loan) Program** includes Federal Perkins Loans, National Direct Student Loans (NDSL), and National Defense Student Loans (NDSL).
- The **William D. Ford Federal Direct Loan (Direct Loan) Program** includes Federal Direct Stafford/Ford Loans (Direct Subsidized Loans), Federal Direct Unsubsidized Stafford/Ford Loans (Direct Unsubsidized Loans), Federal Direct PLUS Loans (Direct PLUS Loans), and Federal Direct Consolidation Loans (Direct Consolidation Loans).
- A **conditional discharge** due to a total and permanent disability allows you (and, if applicable, any endorser) to stop making payments on your loan(s) during the conditional discharge period (see definition) while ED evaluates your eligibility for a final discharge. A conditional discharge is granted when ED makes an initial determination that you have a total and permanent disability as defined in this section. See also Sections 6 and 7.
- The **conditional discharge period** begins on the date that you became totally and permanently disabled, as certified by the physician who completes Section 3, and lasts for up to three years. The conditional discharge period ends when ED either grants a final discharge or determines that you do not qualify for a final discharge. During the conditional discharge period, ED will monitor your eligibility for a final discharge. See also Sections 6 and 7.
- A **final discharge** due to a total and permanent disability condition cancels your obligation (and, if applicable, any endorser's obligation) to repay the remaining balance on your FFEL Program, Perkins Loan Program, and/or Direct Loan Program loan. ED grants a final discharge if you meet certain conditions during and at the end of the conditional discharge period. See Section 7.
- The **holder** of your FFEL Program loan(s) may be a lender, a guaranty agency, or the U.S. Department of Education (ED). The holder of your Perkins Loan Program loan(s) may be a school you attended or ED. The holder of your Direct Loan Program loan(s) is ED.
- **State** includes the 50 United States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
- If you have a **total and permanent disability**, this means that you are unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death. **NOTE: (1)** This standard may be different from standards used under other programs in connection with occupational disability or eligibility for social service benefits. **(2)** You cannot be considered to have a total and permanent disability if your condition existed at the time your loan(s) was made, unless your condition has substantially deteriorated so that you are now totally and permanently disabled.

SECTION 6: LOAN DISCHARGE PROCESS / TERMS AND CONDITIONS FOR LOAN DISCHARGE

1. If your loan holder (other than ED) determines, based on a review of your loan discharge application, that you appear to meet the eligibility requirements for a loan discharge based on total and permanent disability, your loan(s) will be assigned to ED. For FFEL Program loans currently held by a lender, this determination will be made by both your lender and guaranty agency. ED will be your new loan holder.
2. After receiving your loan(s), ED will review the physician's certification in Section 3 and other information relating to your application for loan discharge. Based on the results of this review, ED will make an initial determination on your application. If ED determines that you have a total and permanent disability, you will be notified that a conditional discharge has been granted for a period of up to three years from the date that you became totally and permanently disabled. If ED determines that you do not have a total and permanent disability, you will be notified of that determination and you must resume repayment of your loan(s).
3. During the conditional discharge period: **(A)** you are not required to make any payments on your loan(s); **(B)** you are not considered to be delinquent or in default on your loan(s), unless you were delinquent or in default at the time the conditional discharge was granted; **(C)** you must promptly notify ED if your annual earnings from employment exceed the poverty line amount for a family of two; **(D)** you must promptly notify ED of any changes in your address or telephone number; and **(E)** if requested, you must provide ED with additional documentation or information related to your eligibility for loan discharge. This may include, but is not limited to, documentation of your annual earnings from employment.
4. If you meet the conditions described in Section 7, Item 4, during and at the end of the conditional discharge period, ED will grant a final discharge of your loan(s) at the end of the conditional discharge period. The discharge will be reported to credit bureaus, and any payments you made after the date you became totally and permanently disabled will be returned to you.
5. If you do not meet the conditions described in Section 7, Item 4, at any time during or at the end of the conditional discharge period, the conditional discharge period will end and you will not receive a final discharge. This means that you will be responsible for repaying your loan(s) in accordance with the terms of your promissory note(s). However, you will not be required to pay interest that accrued on your loan(s) from the date ED made an initial determination that you were totally and permanently disabled until the date the conditional discharge period ended. ED will continue to be your loan holder.

SECTION 7: ELIGIBILITY REQUIREMENTS FOR LOAN DISCHARGE

1. Your condition must not have existed at the time your loan(s) was made, unless your condition has substantially deteriorated so that you are now totally and permanently disabled.
2. If you are applying for discharge of a consolidation loan, your condition must not have existed at the time any of the loan(s) you consolidated were made, unless your condition has substantially deteriorated so that you are now totally and permanently disabled. If requested, you must provide the holder of your consolidation loan(s) or ED with the disbursement dates of the loan(s) you consolidated.
3. To qualify for a **conditional discharge**, you must have a total and permanent disability, as defined in Section 5. This must be certified by a physician in Section 3.
4. To qualify for a **final discharge**, you must meet the following conditions during and at the end of the conditional discharge period described in Section 6: **(A)** your annual earnings from employment must not exceed the poverty line amount (see NOTE below) for a family of two in your state (regardless of your actual family size), and **(B)** you must not receive a new loan under the FFEL Program, the Perkins Loan Program, or the Direct Loan Program.
NOTE: A physician cannot certify that you have a total and permanent disability if, at the time of the physician's certification, you are able to work and earn money in any capacity. However, if you attempt to work during the conditional discharge period, you may earn up to the poverty line amount each year during that period. This standard allows you to try to work without being disqualified from receiving a final discharge. The poverty line amounts are updated annually. ED will notify you of the current poverty line amounts during each year of the conditional discharge period.

SECTION 8: WHERE TO SEND THE COMPLETED LOAN DISCHARGE APPLICATION

Send the completed loan discharge application and any attachments to:
(If no address is shown, return to your loan holder.)

If you need help completing this form, call:

SECTION 9: ELIGIBILITY REQUIREMENTS TO RECEIVE FUTURE LOANS

1. If you are granted a final discharge due to total and permanent disability, you are not eligible to receive future loans under the FFEL, Perkins Loan, or Direct Loan programs unless: **(A)** you obtain a certification from a physician that you are able to engage in substantial gainful activity, and **(B)** you sign a statement acknowledging that the new loan you receive cannot be discharged in the future on the basis of any injury or illness present at the time the new loan is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled.
2. If you are granted a conditional discharge of your loan(s), based on a total and permanent disability and you request a new FFEL, Perkins Loan, or Direct Loan program loan during the conditional discharge period, you are not eligible to receive the new loan unless: **(A)** you obtain a certification from a physician that you are able to engage in substantial gainful activity; **(B)** you sign a statement acknowledging that neither the previous conditionally discharged loan(s) nor the new loan you receive can be discharged in the future on the basis of any injury or illness present when you applied for a total and permanent disability discharge or at the time the new loan is made, unless your condition substantially deteriorates so that you are again totally and permanently disabled; **(C)** you sign a statement acknowledging that the conditionally discharged loan(s) will be removed from conditional discharge status; and **(D)** ED has removed the conditionally discharged loan(s) from conditional discharge status (see Section 6, Item 5).

SECTION 10: IMPORTANT NOTICES

Privacy Act Notice. The Privacy Act of 1974 (5 U.S.C. 552a) requires that the following notice be provided to you:

The authorities for collecting the requested information from and about you are §428(b)(2)(A) *et seq.*, §451 *et seq.* and §461 *et seq.* of the Higher Education Act of 1965, as amended (20 U.S.C. 1078(b)(2)(A) *et seq.*, 20 U.S.C. 1087a *et seq.*, and 20 U.S.C. 1087aa *et seq.*) and the authority for collecting and using your Social Security Number (SSN) is §484(a)(4) of the HEA (20 U.S.C. 1091(a)(4)). Participating in the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, or the Federal Perkins Loan (Perkins Loan) Program and giving us your SSN are voluntary, but you must provide the requested information, including your SSN, to participate.

The principal purposes for collecting the information on this form, including your SSN, are to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan (such as a deferment, forbearance, discharge, or forgiveness) under the FFEL, Direct Loan, and/or Perkins Loan Programs, to permit the servicing of your loan(s), and, if it becomes necessary, to locate you and to collect on your loan(s) if your loan(s) become delinquent or in default. We also use your SSN as an account identifier and to permit you to access your account information electronically.

The information in your file may be disclosed to third parties as authorized under routine uses in the appropriate systems of records. The routine uses of this information include its disclosure to federal, state, or local agencies, to other federal agencies under computer matching programs, to agencies that we authorize to assist us in administering our loan programs, to private parties such as relatives, present and former employers, business and personal associates, to credit bureau organizations, to educational institutions, and to contractors in order to verify your identity, to determine your eligibility to receive a loan or a benefit on a loan, to permit the servicing or collection of your loan(s), to counsel you in repayment efforts, to enforce the terms of the loan(s), to investigate possible fraud and to verify compliance with federal student financial aid program regulations, or to locate you if you become delinquent in your loan payments or if you default, to provide default rate calculations, to provide financial aid history information, to assist program administrators with tracking refunds and cancellations, or to provide a standardized method for educational institutions efficiently to submit student enrollment status.

In the event of litigation, we may send records to the Department of Justice, a court, adjudicative body, counsel, party, or witness if the disclosure is relevant and necessary to the litigation. If this information, either alone or with other information, indicates a potential violation of law, we may send it to the appropriate authority for action. We may send information to members of Congress if you ask them to help you with federal student aid questions. In circumstances involving employment complaints, grievances, or disciplinary actions, we may disclose relevant records to adjudicate or investigate the issues. If provided for by a collective bargaining agreement, we may disclose records to a labor organization recognized under 5 U.S.C. Chapter 71. Disclosures may also be made to qualified researchers under Privacy Act safeguards.

Paperwork Reduction Notice. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 1845-0065. The time required to complete this information collection is estimated to average 0.5 hours (30 minutes) per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651. Do not send the completed loan discharge application to this address.**

If you have comments or concerns regarding the status of your individual submission of this form, contact your loan holder (see Section 8).