1. **Situation:** At the time that a loan holder submits the TPD application and the VA documentation to the guaranty agency, the procedures require them to also file a TPD claim with the guaranty agency.

Questions:
1. Why would a claim be filed at this point in time, prior to a determination being made? Wouldn’t it make more sense to wait until the determination has been made by the Department and then have the guaranty agency request that the lender file a claim?

   **A1.** According to guidance provided in DCL GEN-09-07, if “…the VA documentation indicates that the borrower is eligible for a TPD discharge, the holder must then submit the application and VA documentation to the guaranty agency. At the same time the FFEL lender should file a TPD claim with the guaranty agency”. This procedure was adopted by ED directly from the VA-TPD Q&A submitted by the TPD workgroup in November 2008. Our goal is to move this process along and not leave disabled veterans in limbo (like the current conditional discharge process) until ED gets around to rendering a final decision. We have reiterated to ED the need to not jeopardize the federal reinsurance agreement and they have been receptive to our concerns. Should the guarantor community realize that the new Veterans Disability Discharge Unit is unable to turn this documentation around in a timely manner, the TPD workgroup in conjunction with NCHELP will discuss further with ED.

2. How can the lender have the borrower in a claim status AND in a cease collection activity at the same time? (Q & A #6 of the DCL GEN-09-07 indicates the loan holder must suspend collection activity of the loan during this period, but if the request is DENIED, the loan is considered to have been in forbearance during this period.)

   **A2.** “How” is dependent on a servicer’s individual system but this is no different from any other (non-VA) disability claim. If the guarantor does not pay the claim, it is returned to the loan holder who then applies an administrative forbearance and returns the loan to servicing. The VA aspect of this claim type should have no operational impact on that process.

3. The claim amount is to include payments made after the effective date of the VA disability. However, in #6 of Section III, it indicates, “If the documentation provided by the borrower does not include an effective date, the Department will obtain the
effective date from the VA and provide that information to the guaranty agency.” That would mean that the claim would have already been filed without knowing the effective date, and the amount of the claim would not include any payments made after that “unknown” date? How does the original claim amount get adjusted?

A3. In the absence of specific guidelines, this will be a trading partner issue and guarantors will have flexibility in how this is handled. It is hoped that the volume of VA-based TPD claims that do not have a readily apparent effective date of disability will be so small that a guarantor can resolve the issue with a trading partner via e-mail or fax so that any necessary adjustments can be made prior to claim payment. Some agencies, however, may elect to make adjustments to the original claim payment amount after the fact in the form of a supplemental claim.

4. Even if the effective date of the VA disability is known and payments were made after the effective date, how can the lender file a claim for more than what is on its system? Would they have to back out the payments? If it is then denied, the payments would have to go back up on the system?

A4. Those familiar with the TPD claim process prior to conditional discharge will recognize that this guidance is not without precedent. The lender must calculate the principal balance as of the effective date of the grant of disability by the VA by adding back to principal the amount applied to principal from payments received on or after that date. The lender must increase the principal amount of the claim based on that calculation. The lender may request interest for the period represented by payments that will be subsequently returned to the sender upon receipt of the claim payment. This interest should not be capitalized, but treated as accrued interest by adjusting the interest-paid-through date to reflect removal of the payments that will be returned to the sender. Lenders are not required to adjust interest that has been capitalized.

5. How will the lender apply for the additional interest that has accrued during the period of time that the determination is being made?

A5. The lender will not need to “apply” for interest that accrues during the time that a determination is being made. Guarantors pay all accrued interest for processing time up to the date of claim payment. Nothing in the VA-based TPD procedures changes that.

6. How will that additional interest be submitted to the guaranty agency to be included in the claim payment?

A6. See A5 above.
7. How will the lender adjust the claim submitted balance if they need to return payments applied after the effective date of the VA disability determination?

A7. See A3 and A4 above.

2. Situation: Oftentimes, it isn’t learned that the borrower qualifies for a TPD until after a final claim has been filed by the lender.

For purposes of this situation, the TPD workgroup assumes “final claim” means a default claim and reference to “maximum timeframes” refers to regulatory deadlines for claim payment. In other words, we assume these questions are based on a scenario in which TPD eligibility is not learned until after submittal of a default claim to the guarantor.

Questions:

1. Given this scenario, what impact will that have on the maximum claim payment timeframe that is imposed on the guaranty agency (i.e., maximum timeframe from date of submission of final claim to date of claim payment to lender)?

A1. Absent regulatory guidelines, guarantors may maintain the flexibility to continue processing default claims that “convert” to a specialty claim type in the same manner as they have in the past.

2. Will the guaranty agency be released from any maximum timeframe for payment of this type of claim?

A2. Nothing in the VA-based TPD procedures changes regulatory deadlines for claim processing by guarantors.

3. Can the Department provide the guarantors with an indication of the duration of time they anticipate it will take for them to make a determination of the borrower’s eligibility?

A3. ED has indicated in informal conversations that the determination can be made within 45 days. However, their timeframes are never mandated in regulatory or DCL language. See also A1 under Situation #1.

4. If the borrower is in default when they apply for a VA TPD, should the guarantor cease collection activity? Does that mean that the guarantor should inactivate treasury offset? SSI?

A4. Nothing in the VA-based TPD procedures changes post-default collection requirements (or the cessation thereof) for guarantors.
3. Situation: Procedures provided by the Department indicate that a new NSLDS code is being developed for this claim type and further state until that occurs, loans should be reported as code “DI” for non-defaulted loans and “DS” for defaulted loans.

Question:
1. Will there be a new claim type developed for this type of TPD, or, will we continue to use the current TPD claim type?
   A1. The decision has been made that a new claim type is not necessary. Guarantors will need to implement sufficient internal controls to insure proper NSLDS reporting.

4. Situation: DCL GEN-09-07 does not include information about what entity notifies a non-defaulted borrower that his/her TPD discharge request, based on VA documentation, has been approved.

Questions:
1. Should notification to the borrower in these cases align with the “regular” TPD process - guarantor pays the claim to the lender and the lender notifies the borrower that the request was approved?
   A1. No. NPRM verbiage published July 23, 2009 (Federal Register/Vol. 74, No.140, page 36562) states that, “[t]he guaranty agency would pay the lender’s disability discharge claim and notify the borrower that the borrower’s obligation to make any further payments on the loan has been discharged.”

Note: This issue will likely be raised with the Department as part of the FFEL community’s comments to the NPRM. The community would prefer that the borrower notification process mirror current TPD procedures in which the lender provides all borrower correspondence.

2. If the documentation is denied by the Department will the Department be specific in advising the guarantor of the denial reason for purposes of conveying that information to the borrower?
   A2. This issue was discussed during the negotiated rulemaking sessions earlier this year and the Department has agreed that denial reasons will be provided. However, Department procedures are not spelled out in regulatory or DCL language.
5. **Situation:** Discharge due to VA TPD does not preclude the borrower from receiving loans after the date of discharge.

Guidance in DCL GEN-09-07 states that “a borrower who has received a discharge of a prior loan based on a VA disability determination may receive a new Perkins, FFEL, or Direct Loan program loan in accordance with the eligibility requirements in 34 CFR 674.9(g)(1) and (2), 34 CFR 682.201(a)(6)(i) and (ii), and 34 CFR 685.200(a)(1)(iv)(A), respectively. These sections do not afford the borrower carte blanche to continue taking out loans and seeking discharge. The borrower must secure certification from a physician that the borrower is “able to engage in substantial gainful activity” and must acknowledge that any loan taken out in the future “cannot be discharged in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates”.

Questions:
1. Does that mean the borrower can just keep receiving loans to later have them discharged?  
   A1. See general note above.
2. Would the borrower have to submit subsequent documentation?  
   A2. See general note above.
3. If not, does the lender submit them as claims and the guarantor assigns them to the Department?  
   A3. See general note above.

6. **Situation:** Borrower is already in an approved conditional discharge status.

Questions:
1. Can the borrower have their conditional discharge converted to a final discharge if they submit the required documentation?  
   A1. Yes.
2. If so, should that documentation be forwarded by the borrower directly to the Department?  
   A2. Yes. The Department is the loan holder during the conditional discharge process.

7. **Miscellaneous Questions:**
1. To clarify, when sending the application and VA documents to the Department, the guarantor would only be sending copies of the application and VA documents, not the originals?

A1. Correct. DCL GEN-09-07, Section III #4 states that a copy of the TPD application and VA documentation must be sent to the Department.

2. Will there be a contact person (name) of someone to call for questions concerning the approval or denial of the VA disability discharge?

A2. DCL GEN-09-07 indicates that submission questions should be directed to the Department’s Veterans Disability Discharge Unit by phone at (404) 562-6012, by fax at (404) 562-6059, or by e-mail to FSAAAtlantaContracts@ed.gov. When calling, request the Veterans Disability Discharge Unit. When faxing or e-mailing, include “RE: Veterans Disability Discharge” in the subject line.

3. In what format will guarantors be notified of the borrower’s eligibility for Discharge and the effective date that should be used (i.e. letter, email, etc.)?

A3. Guarantors that have received such confirmation of eligibility have received the decision via e-mail.

4. Why would we implement an entirely new process for reviewing a VA disability when the process could be made to mirror the already existing TPD claim processing?

A4. Statute requires that these discharges be expedited while still allowing the Department the latitude to incorporate sufficient protections to insure against fraud. As the decision of disability is already being made by one federal agency, this population of borrowers is not required to go through additional ED steps. Anything short of an immediate discharge could be seen as a disservice to veterans.

5. Instead of the GA contacting VA for review, why couldn't we process the claim as we currently do, and have CDDU coordinate the VA review and determination?

A5. See A4 above.