NATIONAL STUDENT
LEGAL DEFENSE NETWORK

1015 15th St. NW, Suite 600
Washington, DC 20005
www.nsldn.org

June 21, 2021

Richard Cordray
Chief Operating Officer
Office of Federal Student Aid
United States Department of Education
830 First Street, N.E.
Washington, D.C. 20002

Re: Total and Permanent Disability Discharge Data

Dear Mr. Cordray,

For decades, student loan borrowers with "total and permanent" disabilities have been legally entitled to a complete discharge of their student loans.[1] To ease the burden for these individuals, in 2013, the U.S. Department of Education (Department) amended its regulations to establish that certain determinations by the Social Security Administration (SSA) would constitute conclusive "proof" of a borrower's entitlement to a discharge.[2] In April 2016, to further ease the process, the Department announced that it entered into an agreement with SSA to receive this "proof" of TPD eligibility directly from SSA via a data match.[3] In its press release announcing the program, the Department stated that the initial match identified 387,000 borrowers, with a total federal loan balance of $7.7 billion.[4]

On April 5, 2021, the National Student Legal Defense Network (Student Defense) submitted a Freedom of Information Act (FOIA) request seeking data relating to the implementation of the SSA matching program.[5] In its response, the Department provided the following information:

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[1] HEA § 437(a)(1), 20 U.S.C. § 1087(a)(1).
[2] *See* Final Regulations, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 77 Fed. Reg. 66,088, 66,092 (Nov. 1, 2012) (effective July 1, 2013).
[3] *See* Press Release, U.S. Dep't of Educ., U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities (Apr. 12, 2016), *available at:* https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities.
[4] *Id.*
[5] Student Defense's FOIA request is attached hereto as Exhibit A.

Total Individuals Matched[6]	Total Individuals w/ Debt Discharged	Total Amount Discharged	Total Borrowers NOT Discharged	Total Amount NOT Discharged
818,074	300,405	$8,842,264,164	517,669	$8,036,093,898

Unfortunately, this data raises more questions than it answers. Of course, our most pressing concern is why the Department does not discharge all of this debt immediately. Borrowers with disabilities have a statutory entitlement to a discharge, and the Department knows the identity of the borrowers and has "proof" of the entitlement.

But specific to the data, we are concerned that the Department's information may not be correct. It seems highly unlikely that the 300,405 borrowers that received TPD discharges carried $800 million more in debt than the 517,669 borrowers who have not yet received discharges (*i.e.*, $8.842 billion vs. $8.036 billion). Likewise, the $8.036 billion in undischarged debt for approximately 517,000 borrowers seems further improbable when compared to the April 2016 announcement than 387,000 borrowers held $7.7 billion in outstanding debt. Simply put: by either comparison, the Department's data indicating that 517,669 borrowers with an entitlement to a discharge owe $8,036,093,898 seems to be an understatement of the size of the debt.

Accordingly, can you confirm whether these numbers are correct and, if not, provide the correct information?

In addition, as you may also be aware, on April 19, 2021, Student Defense and others filed a petition, under section 553(3) of the Administrative Procedure Act, to amend the TPD Regulations. That petition also called on the Department to promptly provide automatic discharges to what we now know are over half a million borrowers who are entitled to relief, but have not received it.[7] Under the Department's regulations, 34 C.F.R. § 9.9(c)(3), within 60 calendar days of receiving the Petition, "the head of the POC with regulatory responsibility over the matter described in the petition, or their designee, must recommend whether to - (A) Proceed with consideration of rulemaking, an exemption, or retrospective review; or (B) Deny, in whole or in part, the petition." That 60 day period expired on Friday, June 18.

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[6] The Department response, provided on an Excel spreadsheet, is attached hereto as Exhibit B. Because the Department did not provide a date for this data, we assume it is current as of April 2021 (when we submitted the FOIA request).

[7] The Petition is attached hereto as Exhibit C and is also available at https://www.defendstudents.org/news/body/2021.04.19-Final-Petition-re-TPD-Rulemaking3.pdf.

Accordingly, can you please provide an update on the status of the Department's review?

As noted above and set forth in the Petition, and based on this new data, Federal Student Aid has "proof" that over half a million borrowers with disabilities are legally entitled to a student loan discharge. But for reasons that appear purely technocratic, the Department is refusing to provide the relief without a borrower submitting an unnecessary form. That process is simply not working.

Once again, we ask the Department to do everything in its power to assist these student loan borrowers. When the current student loan payment freeze expires on September 30, these individuals with disabilities will be forced back into repayment or involuntary collections on loans the Department knows they do not owe.

We look forward to your response and to working with you on this matter.

Respectfully submitted,

/s/ Daniel A. Zibel
Daniel A. Zibel (D.C. Bar No. 491377)
Alexander S. Elson (D.C. Bar No. 1602459)
National Student Legal Defense Network
1015 15th Street NW, Suite 600
Washington, D.C. 20005
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Letter to R. Cordray
June 21, 2021
Exhibit A

NATIONAL STUDENT
LEGAL DEFENSE NETWORK

1015 15th St. NW, Suite 600
Washington, DC 20005
www.nsldn.org

April 5, 2021

VIA ELECTRONIC MAIL
FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave, S.W.
LBJ 2E320
Washington, D.C. 20202
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the United States Department of Education ("ED" or "the Department"), 34 C.F.R. Part 5, the National Student Legal Defense Network ("Student Defense") makes the following request for data regarding federal student loan borrowers who have been positively identified as eligible for total and permanent disability ("TPD") discharges through the Department's matching agreement with the Social Security Administration ("SSA").

Under the Higher Education Act ("HEA"), student loan borrowers who are "totally and permanently" disabled are entitled to a complete discharge of their federal student loans.[1] On April 12 2016, the Department announced that it was working with the SSA to complete a data match to identify federal student loan borrowers who are eligible for a TPD discharge ("SSA Process").[2] As of February 2020, "approximately 589,000 borrowers were identified through the SSA Process. Of those borrowers, more than 227,000 borrowers with loans totaling $8.2 billion have been approved for discharges."[3]

After a borrower matches through the SSA process, the Department sends them "a customized letter explaining that the borrower is eligible for loan forgiveness and the simple steps needed to

[1] HEA § 437(a); 20 U.S.C. § 1087(a).
[2] *See* Press Release, U.S. Dept. of Education (April 12, 2016), *available at:* https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities.
[3] *See* U.S. Department of Education Responses to Questions for the Record Submitted by Senator Patty Murray Following the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies March 5, 2020 Hearing to Review of the FY2021 Budget Request for the U.S. Department of Education at 40, *available at:* https://www.help.senate.gov/download/wordmurrayqfrs5mar20hearingonfy21edbudget.

receive a discharge."[4] Initial notification letters "will be followed up with a second letter that will be sent 120 days after the initial letter if a signed application is not received."[5]

In December 2016, the GAO reported that, as of July 31, 2016, the Department had sent TPD discharge applications to 234,000 borrowers based on the SSA data match and, of those, "about 12,500 letters were sent to borrowers but returned because the borrower is no longer at that address."[6]

Request

Student Defense hereby requests that the Department produce the following within twenty business days:

For borrowers who have been identified as eligible for a TPD discharge through the SSA Process to date (i.e. borrowers who have "matched" through the SSA Process), documents sufficient to show:

1. Since the SSA Process started in 2016, the total number of borrowers who have been positively identified as eligible for a TPD discharge.

    a. Of those borrowers who have matched through the SSA process, the total number who have received a TPD discharge, and the total dollar value of their discharged federal student loan debt.

    b. Of those borrowers who have matched through the SSA process, the total number who have **not** received a TPD discharge, and the total dollar value of their outstanding federal student loan debt.

2. The total number of SSA matches for whom the Department does not have a valid address on file.

3. The total number of SSA matches whose SSA match notification letters have been returned to sender.

Note: For each of these requests, in lieu of documents Student Defense would accept a chart or description providing the requested information.

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[4] *See* April 2016 Press Release, *supra,* note 2.
[5] *Id.*
[6] *See* GAO Report, "Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief" note 61 (Dec. 2016), *available at:* https://www.gao.gov/assets/gao-17-45.pdf.

FOIA presumes disclosure. Indeed, "[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a 'strong presumption in favor of disclosure.'" *AP v. FBI*, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516 at *10 (D.D.C. Sept. 30, 2017) (quoting *Dep't of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, *i.e.*, if disclosure would "harm an interest protected by an exemption" or is otherwise "prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i). If ED takes the position that any portion of any requested record is exempt from disclosure, Student Defense requests that you "demonstrate the validity of [each] exemption that [ED] asserts." *People for the American Way v. U.S. Dep't of Educ.*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide Student Defense with a Vaughn Index "which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption's relevance." *Id.* (citing *Johnson v. Exec. Office for U.S. Att'ys*, 310 F.3d 771, 774 (D.C. Cir. 2002)). *See also Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification specifically identifying the reasons why the exemption is relevant. *See generally King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In addition to the records requested above, Student Defense also requests records describing the processing of this request, including records sufficient to identify search terms used (if any); the locations and custodians searched; and any tracking sheets, questionnaires, emails, or certifications completed by, or sent to, ED personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

Student Defense seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, ED has a duty to construe a FOIA request liberally.

In conducting a "reasonable search" as required by law you must use the most up-to-date technologies and tools available. Recent technology advances may render ED's prior FOIA practices unreasonable. Moreover, not only does this request require the agency to conduct a search, but individual custodians must conduct their own searches in order to make sure that documents are appropriately collected.

To ensure that this request is properly construed and does not create any unnecessary burden on ED, Student Defense welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material via email to alex@defendstudents.org. We welcome any materials that can be provided on a rolling basis. Nevertheless, Student Defense fully intends to hold ED to the timeframe required by statute for a response to this request.

Request for Waiver of Fees

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33(a), Student Defense requests a waiver of fees associated with the processing of this request because: (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; *and* (2) disclosure of the information is not primarily in the commercial interest of the requester.

Disclosure of Information is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government

1. **The FOIA request specifically relates to the operations or activities of the government.** The documents requested herein relate directly to the Department's management and operation of the TPD program under Title IV of the Higher Education Act, and therefore relate specifically to the operations or activities of the government.

2. **The requested documents will likely contribute to an understanding of those specific operations or activities.** The requested documents are essential to understanding the current status of discharges under the TPD matching programs with the SSA. As such, they will contribute to a greater understanding of this central Department of Education function.

3. **The disclosure will contribute to a greater understanding on the part of the public at large.** Student Defense seeks this information to increase public understanding regarding the Department's implementation of the TPD program under the SSA Process. Student Defense has the capacity to analyze any documents provided and disseminate its analysis to the public through its website and other sources.

4. **Disclosure will "significantly" contribute to the public's understanding of government activities.** This request seeks information that will allow Student Defense to more completely understand the scale and status of the Department's implementation of the TPD regulation under the SSA Process.

Disclosure of Information is Not in the Commercial Interest of Student Defense

This request is fundamentally non-commercial. Student Defense is a non-profit, non-partisan 501(c)(3) organization. Student Defense's mission is to work, through a variety of means, to advance students' rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. We also believe that transparency is critical to fully

understanding the government's role in student protections and promoting opportunity. As noted above, Student Defense has the capacity to make the information it receives available to the public through reports, social media, press releases, litigation filings, and regulatory comments to government agencies. For these reasons, Student Defense qualifies for a fee waiver.

* * *

Student Defense looks forward to working with you on this request. If you have any questions or concerns, or anticipate any problems in complying with this request, please contact me at alex@defendstudents.org. If Student Defense's request for a fee waiver is not granted, and any fees will be in excess of $25, please contact me immediately.

Sincerely,

/s/ *Alexander Elson*

Alexander Elson
Senior Counsel

Letter to R. Cordray
June 21, 2021
Exhibit B

TPD (FOIA) FIMs Request - BU Lead Nomination: 21-01335-F

1. Since the SSA Process started in 2016, the total number of borrowers who have been positively identified as eligible for a TPD discharge.

818,074 borrowers

a. Of those borrowers who have matched through the SSA process, the total number who have received a TPD discharge, and the total dollar value of their discharged federal student loan debt. (Loan values are pulled from Nelnet servicing platform and includes principal and interest)

Full Discharge Group:

300,405 borrowers $ 8,842,264,164

SSAPQ Specific Group:

262,486 borrowers $ 7,348,559,392

Reinstated Group (subset of Full Discharge and SSAPQ Specific Groups)

58,071 borrowers $ 1,438,736,639

b. Of those borrowers who have matched through the SSA process, the total number who have not received a TPD discharge, and the total dollar value of their outstanding federal student loan debt. (Loan value is based on data obtained by NSLDS and uses outstanding principal balance)

517,669 borrowers $ 8,036,093,898

2. The total number of SSA matches for whom the Department does not have a valid address on file. (Current snapshot)

22,808 borrowers

3. The total number of SSA matches whose SSA match notification letters have been returned to sender.

46,872 borrowers

Letter to R. Cordray
June 21, 2021
Exhibit C

STUDENT DEFENSE
NATIONAL STUDENT LEGAL DEFENSE NETWORK

1015 15th St. NW, Suite 600
Washington, DC 20005
www.defendstudents.org

April 19, 2021

Submitted Electronically Via www.regulations.gov & Via Email
Dr. Miguel Cardona
Secretary of Education
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue S.W.
Washington, D.C. 20202

Re: Section 553(e) Petition to Provide Automatic Total and Permanent Disability (TPD) Discharges

Dear Secretary Cardona,

The National Student Legal Defense Network ("Student Defense"), Community Legal Aid Society Inc. of Delaware, and Justice in Aging submit the below petition pursuant to 5 U.S.C. § 553(e) and 34 C.F.R. § 9.9(c) to request that the United States Department of Education promptly amend its regulations in order to provide total and permanent disability discharges to the hundreds of thousands of student loan borrowers that the Department knows are entitled to the relief, but who have not received it.

By our estimate, these changes could provide an estimated $14 billion in student loan discharges to approximately 400,000 student loan borrowers experiencing "total and permanent" disabilities. If these changes are not made before the student loan payment freeze expires on September 30, 2021, these borrowers will once again be forced into repayment on loans the Department has already determined they do not owe.

Please contact the undersigned counsel at Student Defense if you have any questions or would like to discuss this further.

Sincerely,

Alexander S. Elson (D.C. Bar No. 1602459)
Senior Counsel, Student Defense
alex@defendstudents.org

cc (by email):
Mr. Andrew M. Saul, Commissioner of Social Security
Ms. Melanie Muenzer, Chief of Staff, Office of the Under Secretary of Education
Ms. Emma Leheny, Acting General Counsel, Department of Education

PETITION TO AMEND REGULATIONS BEFORE THE UNITED STATES DEPARTMENT OF EDUCATION

In re: Total and Permanent Disability Discharges Petition by the National Student Legal Defense Network, Community Legal Aid Society Inc. of Delaware, and Justice in Aging to Amend Total and Permanent Disability Discharge Regulations

PETITION TO AMEND UNITED STATES DEPARTMENT OF EDUCATION REGULATIONS PURSUANT TO SECTION 553(e) OF THE ADMINISTRATIVE PROCEDURE ACT

1. The National Student Legal Defense Network ("Student Defense"), Community Legal Aid Society Inc. of Delaware ("CLASI"), and Justice in Aging ("JIA"), bring this petition to amend regulations pursuant to 5 U.S.C. § 553(e) and 34 C.F.R. § 9.9(c) to ensure that hundreds of thousands of individuals experiencing "total and permanent" disabilities receive the federal student loan discharge that they are entitled to under the Higher Education Act ("HEA").

2. Congress decades ago determined that student loan borrowers experiencing "permanent and total" disability are *entitled* to a complete discharge of their federal student loans. 20 U.S.C. § 1087(a).

3. In 2013, in order to "reduce burden for borrowers" with disabilities, the United States Department of Education ("Department") amended its regulations governing Total and Permanent Disability ("TPD") discharges to provide that notices from the Social Security Administration ("SSA") awarding for Social

Security Disability Insurance ("SSDI") benefits under Title II of the Social Security Act or Supplemental Security Income ("SSI") benefits under Title XVI "will suffice as proof" of eligibility for a TPD discharge, as long as SSA has categorized them as Medical Improvement Not Expected ("MINE") or having a disability review scheduled once every five to seven years.[1]

4. At that time, the Department recognized that borrowers with disabilities did not need to be burdened by separately applying to two federal agencies in order to establish eligibility under "substantial[ly] similar[]" statutory criteria.[2] By designating documentation from SSA as "proof" of eligibility for a TPD discharge, the Department reasoned that it was "streamlin[ing] and simplify[ing] the TPD process and eas[ing] regulatory burden for both applicants and the Department."[3]

5. But by 2015 and 2016, the Department determined that the 2013 changes did not go far enough. Borrowers, according to the Department, were "falling through the cracks, unaware they were eligible for relief" that they had a "right" to. The Department stated that it "need[ed] to make it easier, not harder, for [Americans with disabilities] to receive the benefits they are due."[4]

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[1] *See* Final Regulations, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 77 Fed. Reg. 66,088, 66,092 (Nov. 1, 2012) (effective July 1, 2013).
[2] *Id.*
[3] *Id.*
[4] *See* Press Release, U.S. Dep't of Educ., U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities (Apr. 12, 2016) (hereinafter "SSA Match Press Release"), *available at:* https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities.

6. For this reason, the Department announced in 2016 that it entered into an agreement with SSA enabling the Department to receive "proof" of TPD eligibility directly from SSA. As of the most recent publicly available information (from 2020), SSA has identified over 625,000 individuals who are entitled to a TPD discharge based upon SSA's categorization of their disability, and has provided their information to the Department. But according to recent data, only approximately one-third of these individuals have obtained TPD discharges.

7. Alternatively stated, the Department currently possesses definitive proof of TPD eligibility for more than 400,000 borrowers. Nevertheless, the Department is requiring these individuals to affirmatively apply for a TPD discharge—by completing a byzantine application that includes false, misleading, and legally incorrect information—in order to repeat what the Department already knows: that they are entitled to the discharge.

8. An application, currently required by the regulations, is wholly unnecessary. Indeed, as it relates to borrowers who were identified via a similar matching program with the United States Department of Veterans Affairs ("VA"), the Department—under Secretary DeVos—correctly stated that an application is an "unnecessary administrative barrier" where the Department already possesses "the necessary information" to grant the TPD discharge.[5]

[5] *See* Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act, 84 Fed. Reg. 65,000, 65,001-002 (Nov. 26, 2019), *available at:* https://www.govinfo.gov/content/pkg/FR-2019-11-26/pdf/2019-25813.pdf.

9. Borrowers identified as eligible by the VA do not have to apply for a TPD discharge. Borrowers identified as eligible by SSA must apply. At minimum, this requirement is arbitrary, capricious, and not required by law.

10. This "unnecessary administrative barrier" imposed on unquestionably eligible individuals with severe physical and mental disabilities has resulted in injustice throughout the TPD system. Since the SSA match started, the Department has been unable to reach tens of thousands of vulnerable and largely low-income borrowers to inform them of their entitlement to the discharge.[6] Moreover, between May 2016 and November 2019, the Department used treasury offset procedures to collect an estimated $20 million in desperately needed benefits from over 20,000 borrowers to satisfy student loans that the Department knew were entitled to be discharged.[7]

11. Together, these facts make clear that borrowers who have been identified through the SSA matching process are being denied meaningful access to a government benefit. These borrowers have not only been subjected to methods of administration that impedes their abilities to obtain the discharges to which they

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[6] *See, e.g.,* U.S. Gov't Accountability Off., GAO-17-45, Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief at 31, note 61 (Dec. 2016) (hereinafter "2016 GAO Report") (explaining that, of the 234,000 borrowers who matched through the SSA process as of July 31, 2016, "about 12,500 letters were sent to borrowers but returned because the borrower is no longer at that address"), *available at:* https://www.gao.gov/assets/690/681722.pdf.

[7] *See* Off. of the Inspector Gen., Soc. Sec. Admin., A-06-17-50281, Social Security Administration Beneficiaries Eligible for Total and Permanent Disability Federal Student Loan Discharge at 5 (2020) ("[W]e estimate, from May 2016 to November 2019, ED used Treasury offset to collect approximately $20.3 million from 20,740 SSA beneficiaries with MINE status and will collect an additional $5.7 million from these beneficiaries over a 12-month period."), *available at*: https://www.oversight.gov/node/92106.

have a statutory right, but which also substantially impair the accomplishments of the objectives of the Title IV program and TPD discharge benefit.[8]

12. Repayment obligations for borrowers with federally issued or held student loans are currently frozen.[9] On September 30, 2021, when the repayment obligation resumes, the hundreds of thousands of individuals who are entitled to, but have not received, TPD discharges will once again be subject to repayment on loans the Department knows they do not owe. Other entitled borrowers—those with commercially held federal loans—are still required to make payments during the freeze. Because TPD discharges do not allow for recoupment of payments made, each payment results in a loss to these borrowers.

13. Because many thousands of eligible borrowers are in default, the Department may soon resume forced collections on their social security benefits, which, for many, is their primary source of income.

14. Since at least February 2018, a bipartisan coalition in Congress—including United States Senators Portman (R-OH), Coons (D-DE), King (I-ME), Collins (R-ME), Duckworth (D-IL), and Gardner (R-CO)—has been calling on the

[8] The failures identified herein render the Department's method of administration of the TPD discharge benefit in violation of section 504 of the Rehabilitation Act and the Department's implementing regulations, insofar as it is substantially impairing the ability of hundreds of thousands of individuals with entitlements to obtain a discharge. *See* 29 U.S.C. § 794; 34 C.F.R. § 105.20(b)(3)(ii) ("The Department may not . . . use criteria or methods of administration the purpose or effect of which would – . . . [s]ubstantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps."); *see also, e.g.*, *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008) ("Where the plaintiffs identify an obstacle that impedes their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit.").

[9] *See* U.S. Dep't of Educ., *Coronavirus and Forbearance Info for Students, Borrowers, and Parents, available at:* https://studentaid.gov/announcements-events/coronavirus (last visited Apr. 13, 2021).

Department to provide automated TPD relief for borrowers identified by SSA as entitled to relief. *See infra* ¶¶ 52–56.

15. The Department must take immediate action to amend its regulations. For the reasons stated herein, the Department has "good cause" to waive both notice-and-comment rulemaking *and* negotiated rulemaking and immediately issue a Final Rule that: (i) eliminates the need for a TPD application and grants automatic discharges to all entitled borrowers with disabilities and (ii) eliminates the three-year post-discharge monitoring period.[10] At the absolute latest, the Department must publish a Final Rule—and implement its discharge mandate—before September 30, 2021.

16. Alternatively, if the Department disagrees, because the negotiated rulemaking process is time intensive and would far outlast the current repayment freeze, the Department can still waive the negotiated rulemaking requirement but issue a notice of proposed rulemaking ("NPRM") with a brief period for public comment, aiming to complete the rulemaking and effectuate a Final Rule by September 30, 2021.

17. These changes could provide an estimated $14 billion in student loan discharges to approximately 400,000 student loan borrowers with disabilities who

[10] As set forth below, even if the Department determined that it lacked good cause to eliminate the monitoring period—which it does not—the FUTURE Act eliminates any roadblock to automatic TPD relief presented by the monitoring period. *See infra* ¶¶ 80-82.

are currently being victimized by the Department's byzantine and unnecessary application process.[11]

JURISDICTION

18. We bring this petition to amend the Department's regulations pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 553(e) and 34 C.F.R. § 9.9(c).[12]

STATEMENT OF INTEREST

19. Student Defense is a non-profit, non-partisan organization, recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code, that works to advance students' rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. Student Defense's official address is 1015 15th St. NW, Washington, DC 20005.

20. Student Defense advocates for student loan borrowers entitled to TPD discharges. Among other things, Student Defense authored a letter, signed by over 30 other organizations, calling in March 2020 for the Department to automate relief

[11] The proposals herein are not meant to provide a substitute for any forms of immediate relief to borrowers—including those with disabilities—that the Department may be considering. *See* Annie Nova, *Biden asks Education secretary to see if he can legally cancel student debt*, CNBC (Apr. 1, 2021), *available at:* https://www.cnbc.com/2021/04/01/biden-administration-explores-options-for-canceling-student-debt.html. Irrespective of those proposals, the Department must fix its regulations to protect student loan borrowers who are or become eligible to TPD discharges.

[12] We anticipate that this petition could be of significant public interest and support members of the public who wish to submit comments in response. To ensure the completeness and public availability of the administrative record, we urge the Department to open expeditiously a docket for the petition on www.regulations.gov. *See* 21 C.F.R. § 10.30(b)(1), (d) (describing similar process used by the Food and Drug Administration for submission of petitions through regulations.gov and the acceptance of public comments).

for individuals identified as eligible by SSA.[13] On December 14, 2020, Student Defense released a memorandum titled "Automating the Discharge of Federal Student Loan Debt for Individuals who are Totally and Permanently Disabled."[14] That memorandum, which called for the same actions requested in this Petition, is attached hereto as Exhibit A.

21. Founded in 1946, Community Legal Aid Society, Inc. ("CLASI"), headquartered in Wilmington, Delaware, is a statewide nonprofit non-partisan law firm whose mission is to combat injustice through creative and persistent civil legal advocacy on behalf of vulnerable and underserved Delawareans. CLASI is also Delaware's designated Protection and Advocacy agency for individuals with disabilities.

22. Over the years, CLASI has represented individuals with disabilities in seeking and obtaining discharges of their student loans under the TPD program. CLASI has also argued in policy papers that the Department must "simplify and automate" the TPD process.[15]

23. Justice in Aging ("JIA") is a national non-profit legal advocacy organization that fights senior poverty through law. JIA's principal mission is to

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[13] *See* Letter from American Fed'n of Tchrs., et al. to the Hon. Betsy DeVos, Sec'y of Educ., U.S. Dep't of Educ. (Mar. 3, 2020), *available at:* https://www.defendstudents.org/news/coalition-urges-devos-to-provide-critical-loan-relief-to-350000-americans-with-disabilities.

[14] *See* Alex Elson, *Automating the Discharge of Federal Student Loan Debt for Individuals who are Totally and Permanently Disabled*, Student Defense (revised Dec. 14, 2020), *available at:* https://www.defendstudents.org/news/body/docket/100-Day-Docket-Disability-Relief-Report-December-Update.pdf.

[15] *See, e.g.,* John Whitelaw and Bethany Lilly, *Relief for Borrowers with Disabilities* (2020), *available at:* https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf#page=94.

protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of legal aid attorneys and other local advocates, JIA seeks to ensure the health and economic security of older adults with limited income and resources. Since 1972, JIA (formerly the National Senior Citizens Law Center) has worked to promote the independence and well-being of low-income older adults, especially women, members of the LGBTQ community, people of color, people with disabilities and people with limited English proficiency.

24. JIA works to ensure access to benefits programs that allow low-income older adults to live with dignity and independence. Older adults carry student loan debt for themselves, and also for their children and grandchildren. In fact, they are the fastest growing age-segment of the student loan market. Older adults with long term disability and student debt are grievously harmed by the Department's unnecessary barriers to obtaining the TPD discharges they are legally entitled to.

BACKGROUND

The Higher Education Act

25. Title IV of the HEA, 20 U.S.C. § 1070 *et seq.*, governs the administration of the federal student loan program. As part of that program, the government issues Federal Direct Loans ("Direct Loans"). The Department also holds or guarantees loans issued under the Federal Family Education Loan Program ("FFELP") and the Perkins Loan Program ("Perkins").

26. With respect to Direct, FFELP, and Perkins loans, the HEA contains mandatory language that the Department "shall discharge the borrower's liability

on the loan" for borrowers who become "permanently and totally disabled," as determined in accordance with regulations of the Secretary.[16] Under the statute, once the Department has made a decision regarding eligibility for a TPD discharge, the Department has no discretion and must take the ministerial actions necessary to discharge the borrower's debt. Thus, HEA § 437(a)(1) creates a cognizable property interest for eligible borrowers in TPD discharges.

27. The Department has promulgated regulations to determine eligibility for a discharge of each category of loans pursuant to the total and permanent disability entitlement.[17]

28. In 2013, the Department amended its TPD regulations to accept an "SSA notice of award for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) benefits" as conclusive "proof" of a borrower's eligibility for a TPD discharge, so long as the notice indicates that the SSA will review the borrower's continuing eligibility once every five to seven years.[18] Under the amended regulations, a "borrower would not be required to submit a certification by a physician that the borrower is TPD;" appropriate documentation from SSA "alone will suffice as proof of the borrower's TPD."[19]

The SSA Match

29. On April 12, 2016, the Department announced that it had been working closely with SSA to "complete a data match to identify federal student loan

[16] HEA § 437(a)(1), 20 U.S.C. § 1087(a)(1).
[17] *See* 34 C.F.R. § 674.61 (Perkins); 34 C.F.R. § 682.402(c) (FFELP); 34 C.F.R. § 685.213 (Direct).
[18] *See* 77 Fed. Reg. 66,091.
[19] *Id.* at 66,092.

borrowers" who have the "medical improvement not expected," or "MINE" designation which, "because of a change in Department regulations in 2013, qualifies them for loan forgiveness under the TPD discharge program."[20]

30. When it announced the new data matching program, the Department recognized that, although the 2013 changes to the TPD regulation attempted to "streamline the process," those changes were neither working nor sufficient. As then Under Secretary Ted Mitchell explained, even after the 2013 regulations, "too many eligible borrowers were falling through the cracks, unaware they were eligible for relief."[21]

31. The Department concluded that the SSA matching program was necessary in order to "ensure" that "these struggling borrowers . . . receive this entitlement under the law."[22]

32. The Department identified approximately 387,000 borrowers in its first rounds of data sharing with the SSA, conducted in December 2015 and March 2016. These borrowers collectively held loan balances of over $7.7 billion.[23] Of these 387,000 borrowers, approximately 179,000 were in default and more than 100,000 had been certified for garnishment or offset of federal tax refunds and social security benefits.[24]

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[20] *See* SSA Match Press Release. *See also* Computer Matching Agreement Between the Social Security Administration and the U.S. Department of Education Office of Federal Student Aid, Match #1100, Soc. Sec. Admin. (Nov. 6, 202) (hereinafter "SSA Matching Agreement"), *available at:* https://www.ssa.gov/privacy/cma/FSA Computer Matching Agreement with SSA 1100 - all signatures 11.6.2020.pdf.

[21] SSA Match Press Release.

[22] *Id.*

[23] *Id.*

[24] *Id.*

33. Despite the Department's efforts to ensure that entitled borrowers were not "falling through the cracks," the Department has not achieved its desired results. For example, although the Department intended to provide eligible borrowers who match through the SSA process a "letter explaining that the borrower is eligible for loan forgiveness and the simple steps needed to receive a discharge,"[25] the Government Accountability Office ("GAO") concluded that, as of 2016, approximately 12,500 borrowers failed to receive the notice of eligibility for TPD discharge provided by the Department.[26]

34. As another example of the failures in the system, the application provided by the Department contains legally incorrect information about the taxability of discharges. Thus, borrowers may be improperly discouraged from applying for a discharge due to the government providing incorrect tax information. *See infra* ¶¶ 58–59.

35. Moreover, on November 9, 2020, the Office of the Inspector General for the SSA ("SSA OIG") found that SSA erroneously omitted 36,248 borrowers who should have matched through the SSA process.[27] These borrowers have thus been identified as eligible for a TPD discharge, but due to breakdowns in interagency communications, the Department has not provided borrowers with the benefits to which they are entitled.

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[25] *Id.* A copy of the customized letter is available at https://www2.ed.gov/documents/press-releases/04122016-sample-ssa-matchletter.pdf.
[26] *See* 2016 GAO Report at note 61, *supra* note 6.
[27] *See* Off. of the Inspector Gen., Soc. Sec. Admin., A-06-17-50281, Social Security Administration Beneficiaries Eligible for Total and Permanent Disability Federal Student Loan Discharge (2020), *available at*: https://www.oversight.gov/node/92106.

36. As of February 2020, "approximately 589,000 borrowers were identified through the SSA matching process," and, of those, approximately 362,000 had neither applied for nor received a TPD discharge.[28]

37. Including the 36,248 borrowers the SSA OIG found should have matched through the SSA process, there are over 625,000 Social Security recipients eligible for loan discharges under the TPD program, 398,000 of whom have not received TPD relief.

38. Two-thirds of entitled borrowers continue to "fall through the cracks."

The VA Match and Automatic TPD Relief for Veterans

39. On April 16, 2018, the Department announced that it had entered into a computer matching agreement with the VA.[29] As with those whose eligibility for TPD was demonstrated via a match with SSA, those whose eligibility was established through a data match with the VA would receive notice through the mail that they were entitled to a TPD discharge if they formally applied.

40. Because this initiative did not result in sufficient numbers of eligible veterans with disabilities actually receiving the loan discharges to which they were entitled, in August 2019, President Trump signed a Presidential Memorandum

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[28] *See* U.S. Department of Education Responses to Questions for the Record Submitted by Senator Patty Murray Following the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies March 5, 2020 Hearing to Review of the FY2021 Budget Request for the U.S. Department of Education at 40 (explaining that, of the 589,000 borrowers identified through the SSA matching process as of February 2020, "more than 227,000 borrowers with loans totaling $8.2 billion have been approved for discharges"), *available at:* https://www.help.senate.gov/download/wordmurrayqfrs5mar20hearingonfy21edbudget.

[29] *See* Press Release, U.S. Dep't of Educ., U.S. Department of Education and U.S. Department of Veterans Affairs Team Up to Simplify Student Loan Discharge Process for Disabled Veterans (Apr. 16, 2018), *available at:* https://www.ed.gov/news/press-releases/us-department-education-and-us-department-veterans-affairs-team-simplify-student-loan-discharge-process-disabled-veterans.

directing then Secretary DeVos to automatically discharge (*i.e.* without an application) federal student loan debt for veterans identified as eligible by the VA, explaining that the TPD application process was "prevent[ing] too many of our veterans from receiving the relief for which they are eligible" which, in turn, was "frustrat[ing] the intent of the Congress that their Federal student loan debt be discharged."[30]

41. On November 26, 2019, the Department published an Interim Final Rule ("VA IFR") to amend the Perkins, FFEL, and Direct Loan regulations to allow for automatic discharges for individuals whose eligibility was established through the VA data share.[31] In issuing the VA IFR, the Department acknowledged that the TPD application process was "a barrier that creates significant and unnecessary hardship for our disabled veterans" and removing it was therefore "a pressing problem of national concern."[32] Pursuant to the VA IFR, veterans who match through the VA process receive automatic TPD discharges.

The Post-Discharge Monitoring Period

42. When the Department discharges a debt due to a VA determination of disability, there is no further monitoring of the borrower or requirement that the borrower present additional documentation.[33]

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[30] *See* Presidential Memorandum on Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans (Aug. 21, 2019), *available at:* https://www.whitehouse.gov/presidential-actions/presidential-memorandum-discharging-federal-student-loan-debt-totally-permanently-disabled-veterans/.
[31] *See* 84 Fed. Reg. 65,000.
[32] *Id.* at 65,002.
[33] 20 U.S.C.A. § 1087(a)(2) (language added Aug. 14, 2008).

43. By contrast, when the Department discharges a debt due to an SSA match or doctor's determination that the individual is disabled under the statute, the HEA provides that "[t]he Secretary *may* develop" safeguards to prevent fraud and abuse in the TPD program.[34]

44. Under this authority, the Department has chosen to require borrowers, including those whose eligibility has been established through the SSA matching arrangement, to be monitored for three years after a TPD discharge, during which time the loans can be reinstated for any of the following three reasons: (i) the borrower has earnings beyond a minimally acceptable amount; (ii) the borrower has incurred new federal student loans; or (iii) SSA changes its disability determination.[35]

45. If the borrower does not satisfy these reinstatement period requirements, the "Secretary reinstates [the] borrower's obligation to repay" the previously discharged loan.[36]

46. Significantly, the Department will also reinstate a borrower's loans if the borrower fails to provide the required information during the monitoring period, though the regulatory text is ambiguous on this point.[37]

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[34] 20 U.S.C.A. § 1087(a)(1) (emphasis added) (language added July 1, 2010).
[35] 34 C.F.R. § 685.213(b)(7)(i).
[36] *Id.*
[37] *Id.* § 685.213(b)(8). The regulatory text does not specifically require reinstatement, but rather, in a section titled "Borrower's responsibilities after a [TPD] discharge," provides that, during the monitoring period, the borrower "must" provide the Secretary with the required information. The preamble to the 2013 rule states that a "borrower who does not provide the required documentation (particularly income documentation) will have his or her loans reinstated and will be required to resume payment on the loan." 77 Fed. Reg. at 66,097; *see also* U.S. Dept' of Educ., *Total and Permanent Disability Discharge, available at:* at https://studentaid.ed.gov/sa/repay-loans/forgiveness-

47. According to reporting by National Public Radio, of the first 200,000 individuals who received TPD discharges following a data match with SSA, "44,000 have had their loans reinstated because of basic paperwork issues and have not successfully appealed."[38]

48. On March 29, 2021, the Department announced that it would restore discharges for these borrowers, as well as *temporarily* waive the income monitoring requirements. In its announcement, the Department recognized a GAO finding that "98 percent of reinstated disability discharges occurred not because earnings were too high, but because borrowers simply did not submit the requested documentation."[39] Despite acknowledging this systemic flaw in the income monitoring system, the Department only waived the income monitoring requirement "for the duration of the COVID-19 emergency."[40]

49. Finally, the Department is currently developing a system, in coordination with the Internal Revenue Service ("IRS"), to automate the monitoring period. In December 2019, Congress passed the Fostering Undergraduate Talent by

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cancellation/disability-discharge#postdischarge (last visited Apr. 18, 2021) ("During the postdischarge monitoring period, Nelnet will require you to submit documentation of your annual earnings from employment on a form that Nelnet will provide. If you don't submit this form with the required documentation of your income, your obligation to repay your loans or complete your TEACH Grant service obligation will be reinstated."). The Department further explained that "a large proportion of discharged borrowers end up with their loans reinstated because of failure to submit adequate information during the post-discharge monitoring period." 77 Fed. Reg. at 66,119.

[38] Clare Lombardo and Cory Turner, *Student Loan Borrowers With Disabilities Aren't Getting Help They Were Promised*, National Public Radio (Dec. 4, 2019), *available at:* https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve.

[39] Press Release, U.S. Dep't of Educ., Education Department Announces Relief for Student Loan Borrowers with Total and Permanent Disabilities During the COVID-19 Emergency (Mar. 29, 2021), *available at:* https://www.ed.gov/news/press-releases/education-department-announces-relief-student-loan-borrowers-total-and-permanent-disabilities-during-covid-19-emergency.

[40] *Id.*

Unlocking Resources for Education Act ("FUTURE Act"), Pub. L. No. 116-91, which amends Section 6103 of the Internal Revenue Code, 26 U.S.C. § 6103(l)(13), to allow the IRS to disclose certain federal tax information to the Department, including its Office of Federal Student Aid ("FSA").[41] With respect to TPD, "FSA expects to be able to implement automated TPD post-discharge monitoring under the FUTURE Act to eliminate the burden to totally and permanently disabled borrowers who have received TPD discharges."[42]

Bipartisan Support for Automatic TPD Discharges After the Tax Cuts Jobs Act Excludes Them from Taxable Income

50. The Department previously stated that automatic TPD relief was not possible because the cancelled debt could be considered as taxable income.[43]

51. Through the Tax Cuts and Jobs Act of 2017, Congress eliminated federal income tax consequences for disability discharges received from January 1, 2018 through December 31, 2025.[44] By excluding discharges on account of death or disability from "gross income," Congress resolved the Department's primary

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[41] Specifically, 26 U.S.C. § 6103(l)(13)(B) allows the Secretary of the Treasury to disclose to the Department certain tax return information "for the purpose of . . . monitoring and reinstating loans under Title IV . . . that were discharged based on a total and permanent disability." *See also, e.g.*, U.S. Dep't of Educ., *Data Sharing for a Better Customer Experience: The FUTURE Act allows the IRS to share data with FSA for increased ease in administering federal student aid programs*, (last updated Sept. 22, 2020), *available at:* https://studentaid.gov/sites/default/files/future-act-fact-sheet.pdf.

[42] *Id* at 2. FSA "expects to implement FUTURE Act for TPD in 2021, as long as adequate funding is provided." *Ibid.*

[43] *See, e.g.*, U.S. Dep't of Educ., *Total and Permanent Disability Discharge for Federal Student Loan Borrowers* (May 2016) ("Because loan discharges may be considered taxable income, ED cannot automatically grant a loan discharge to these borrowers."), *available at:* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiq7uKq5u_vAhVVMlkFHR_SA8sQFjABegQIAxAD&url=https%3A%2F%2Fwww2.ed.gov%2Fdocuments%2Fpress-releases%2F04122016-disability-discharge-student-loan.doc&usg=AOvVaw0OQER8pRlMG2XHTJj5_6wl.

[44] *See* Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

argument in opposition to providing automatic discharges for borrowers identified through the SSA match.

52. On February 15, 2018, a bipartisan group of United States Senators and Representatives wrote to the Department: "Now that Congress has removed the potential tax consequence associated with loan forgiveness, the Department should immediately begin discharging student loans for eligible individuals." [45] They continued:

> Moving quickly in discharging these student loans is especially important given that the Department of Education is well aware of a significant number of Americans who qualify but have yet to receive loan forgiveness. In 2016, the Department of Education and Social Security Administration identified approximately 387,000 borrowers who were eligible for loan forgiveness due to total and permanent disability but had yet to receive it. These borrowers are collectively still making payments on over $7 billion in outstanding student loans for which they are currently eligible to discharge. These Americans should no longer face costly delays or bureaucratic barriers to receiving a benefit that they are entitled to under law.[46]

53. The Trump Administration agreed, finding in the VA IFR that the Tax Cuts and Jobs Act sufficiently cleared the way for automatic TPD relief so long as the Department provided borrowers with an opportunity to opt out due to any potential state tax concerns. As the Department explained:

> In the past, loan discharge amounts were subject to Federal and in some geographies State tax, which may have dissuaded some veterans who could otherwise navigate the bureaucratic process from seeking a discharge. However, under the Tax Cuts and Jobs Act of 2017 (Pub. L. 115–97), all

[45] Letter from Sens. Rob Portman (R-OH), Chris Coons (D-DE), Angus King (I-ME), Susan Collins (R-ME), Tammy Duckworth (D-IL), and Cory Gardner (R-CO) & U.S. Reps. Ron Kind (D-WI) and Peter Roskam (R-IL) to the Hon. Betsy DeVos, Sec'y of Educ., the Hon. David Shulkin, Sec'y of Veterans Affs. and Ms. Nancy A. Berryhill, Acting Comm'r of Soc. Sec. (Feb. 15, 2018), *available at:* https://www.portman.senate.gov/newsroom/press-releases/new-tax-law-place-sens-portman-coons-king-urge-trump-administration.

[46] *Id.*

> Federal tax was eliminated on loan discharges of borrowers based on death or total and permanent disability. Some small percentage of these eligible veterans may opt out due to concerns over State tax treatment that was not affected by the 2017 Federal tax law.[47]

54. In October 2019, two months after President Trump first announced automatic TPD discharges for borrowers identified through the VA match, the same bipartisan group of Senators and Representatives wrote to urge the Department to extend relief to borrowers identified through SSA matches, explaining that any concern over state taxes was not a real barrier:

> ED has previously cited concerns about state or local taxes as a barrier to relief associated with an automatic federal discharge. However, 41 states, including D.C., conform to the new federal treatment of discharged loans based on death and disability. Also, in carrying out the new automatic discharge for eligible veterans, ED stated it is going to provide the option for veterans to decline loan discharge within 60 days of notification of their eligibility. This makes clear that potential state tax liabilities can be eased with an opt-out and indicates that such an approach could be used for SSA-matched borrowers.[48]

55. The letter continued: "On this issue, the bottom line is simple: Now that Congress has removed the tax consequence associated with loan forgiveness, ED should automatically discharge outstanding federal student loans for all totally and permanently disabled Americans. These Americans should no longer face

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[47] 84 Fed. Reg. 65,003.

[48] Letter from Sens. Rob Portman (R-OH), Chris Coons (D-DE), Angus King (I-ME), Susan Collins (R-ME), Tammy Duckworth (D-IL), and Cory Gardner (R-CO) & U.S. Reps. Ron Kind (D-WI), Brian Fitzpatrick (R-PA), Don Young (R-AK), Jim Langevin (D-RI) to the Hon. Sec'y Betsy DeVos, Sec'y of Educ., the Hon. Sec'y Robert Wilkie, Sec'y of Veterans Affs., and Mr. Andrew M. Saul, Comm'r of Soc. Sec. (Oct. 9, 2019), *available at:* https://www.portman.senate.gov/newsroom/press-releases/senator-portman-joins-bipartisan-effort-urging-trump-administration. *See also, e.g.*, Jared Walczak, *Toward a State of Conformity: State Tax Codes a Year After Federal Tax Reform*, Tax Foundation at 9, Table 1 (Jan 2019), *available at:* https://files.taxfoundation.org/20190201130844/Toward-a-State-of-Conformity-State-Tax-Codes-a-Year-After-Federal-Tax-Reform-FF-631.pdf (discussing state law conformity with federal tax laws).

costly delays or bureaucratic barriers to receiving a benefit that they are entitled to receive under the law."[49]

56. On December 5, 2019, the same bipartisan group wrote to the Department's Office of Inspector General:

> Our letter in October [2019] cited data provided to our staff by ED that as of March 2019, only 40% of eligible borrowers identified in the SSA match have had their loans discharged. However, according to a National Public Radio (NPR) report that aired on December 4, 2019, that is not the case. The investigation found that between March 2016 and September 2019, 555,000 borrowers were identified through the SSA data match as eligible for TPD discharge and were sent a letter in the mail. Ultimately, only 156,000, or 28%, of those borrowers had their loans discharged or are on track for that to happen. . . . [I]t appears that ED's process for TPD loan discharges is failing to provide student loan relief to hundreds of thousands of Americans, including veterans, who are entitled to this relief under the law.[50]

57. To the extent there is any doubt about the tax consequences of TPD discharges, on March 11, 2021, President Biden signed the American Rescue Plan into law. Section 9675 of that legislation provides that *all* federal student loan cancellations are excluded from "gross income" through the end of 2025.

58. Although TPD discharges have not been considered taxable income by the IRS since January 1, 2018, the front of the TPD application still provides the following, false warning:

> **Important Tax Information**
> Loan amounts discharged due to total and permanent disability may be considered taxable income by the Internal Revenue Service (IRS).

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[49] *Id.*

[50] Letter from Sens. Rob Portman (R-OH), Chris Coons (D-DE), Angus King (I-ME), Susan Collins (R-ME), Tammy Duckworth (D-IL), and Cory Gardner (R-CO) & U.S. Representatives Ron Kind (D-WI), Brian Fitzpatrick (R-PA), Don Young (R-AK), Jim Langevin (D-RI) to the Hon. Sandra Bruce, Acting Inspector Gen., Off. of Inspector Gen., U.S. Dep't of Educ. (Dec. 5, 2019), *available at:* https://www.coons.senate.gov/news/press-releases/sen-coons-bipartisan-colleagues-demand-ed-dept-ig-investigation-into-loan-forgiveness-process-following-alarming-npr-report.

Contact the IRS for more information.[51]

59. In addition, when the Department notifies individuals of eligibility for TPD discharge as a result of the SSA determination, the Department's template letter contains the following false statement:

> **Important Information about TPD Discharge:**
>
> **Tax Implications if Your Loans Are Discharged:**
>
> Loan balances that are discharged are generally considered income for federal tax purposes and possibly for state tax purposes. This income can result in income tax liability, but exceptions are available in some circumstances. You may want to review IRS Publication 4681 (available at https://www.irs.gov/pub/irs- pdf/p4681.pdf) or consult with a tax professional to determine how this affects your personal taxes.
>
> To help you file your tax return correctly, we will send you an IRS Form 1099-C showing the total amount of your discharged debt, if your discharged debt is $600 or more. We will also send this information to the IRS.[52]

ACTION REQUESTED

60. To promptly provide borrowers who are entitled to a discharge with the benefit of that entitlement, the Department should find "good cause" to waive both notice-and-comment rulemaking *and* negotiated rulemaking and immediately issue a Final Rule that: (i) eliminates the need for a TPD application[53] and grants

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[51] *See* U.S. Dep't of Educ., Total and Permanent Disability Discharge Forms, *available at:* https://disabilitydischarge.com/Forms (last visited Apr. 8, 2021) (click on the link titled "Discharge Application: TPD (PDF)"). *See also* U.S. Dep't of Educ., Discharge Application: Total and Permanent Disability at 1, *available at:* https://secure.disabilitydischarge.com/Forms/PrintApplication (last visited on Apr. 19, 2021).

[52] *See* U.S. Dep't of Educ., Sample SSA Match Letter, *available at:* https://www2.ed.gov/documents/press-releases/04122016-sample-ssa-matchletter.pdf.

[53] *See* 34 C.F.R. § 685.213(b)(1) ("To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary.").

automatic discharges to all entitled borrowers with disabilities and (ii) eliminates the three-year post-discharge monitoring period.[54]

61. Alternatively, if the Department disagrees, because the negotiated rulemaking process is time intensive and would far outlast the current repayment freeze, the Department can still waive the negotiated rulemaking requirement but issue an NPRM with a brief period for public comment.

62. At the absolute latest, the Department must complete these actions by September 30, 2021, when the student loan payment freeze is set to expire. If the Department has not resolved this issue by September 30, then hundreds of thousands of vulnerable borrowers who the Department acknowledges are entitled to a TPD discharge, will once again resume repayment and suffer significant financial losses that cannot be undone. Even waiting this long is of no solace to the likely thousands of eligible borrowers with commercially held FFEL loans who are not currently receiving the benefit of the payment freeze.[55] For many of these individuals, the Department may once again garnish the very social security checks they depend on to survive, all for debt it knows they do not legally owe. This cannot and must not happen.

STATEMENT OF GROUNDS

The "Good Cause" Standard to Waive Negotiated Rulemaking

[54] *See* 34 C.F.R. § 685.213(b)(7)–(8).

[55] Petitioners separately urge the Department to take all steps consistent with the law to provide relief to borrowers of commercially held FFELP loans. *See, e.g.*, Ltr. from Sen. Patty Murray, *et al.* to the Hon. Betsy DeVos, Sec'y of Educ., U.S. Dep't of Educ. (Oct. 21, 2020), *available at*: https://www.help.senate.gov/imo/media/doc/Letter to DeVos - student loan relief donut hole 21-Oct-2020.pdf.

63. Although the Department is ordinarily required by the HEA to use negotiated rulemaking to develop a proposed rule for programs authorized under Title IV, it has the statutory authority to bypass that process when it finds that "applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest."[56] In light of the express cross-reference to, and incorporation of, section 553 of the APA, 5 U.S.C. § 553, this is often referred to as the "good cause" requirement.

64. "Good cause" under Section 553 of the APA "is determined on a 'case-by-case' basis, based on the 'totality of the factors at play.'" *Nat'l Educ. Ass'n v. DeVos*, 379 F. Supp. 3d 1001, 1020 (N.D. Cal. 2019) (citing *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)); *see also Sorenson Commc'ns Inc. v. F.C.C.,* 755 F.3d 702, 706 (D.C. Cir. 2014) (explaining that the good cause analysis is an "inevitably fact-or-context dependent" inquiry); *Azar*, 911 F.3d at 576 (holding that good cause may be found where "delay would do real harm to life, property, or public safety").

There is Good Cause to Waive Negotiated Rulemaking to Eliminate the Need for a TPD Application Before the Payment Freeze Expires

65. The TPD regulation provides: "[t]he borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary."[57]

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[56] 5 U.S.C. § 553(b)(B). *See also* 20 U.S.C. § 1098a(b)(2) ("All regulations pertaining to [Title IV of the HEA] . . . shall be subject to a negotiated rulemaking . . . unless the Secretary determines that applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest (within the meaning of section 553(b)(3)(B) of title 5), and publishes the basis for such determination in the Federal Register at the same time as the proposed regulations in question are first published.").

[57] 34 C.F.R § 674.61(b)(2)(iv).

66. There is good cause to waive negotiated rulemaking to eliminate this provision as applied to individuals who have matched with the SSA because, as set forth above, the Department already possesses definitive "proof" that these borrowers are entitled to the discharge and does not require any additional evidence or documentation of their eligibility.

67. Accordingly, as the Department determined in connection with the VA match, "there will no longer be a need for" an application from a borrower, because the Department *no longer has discretion* to deny an SSA-matched-borrower's application for a TPD discharge.

68. The Department's prior statements, made in connection with the VA IFR, are prescient:

> As the Court found in *Metzenbaum* v. *Federal Energy Regulatory Commission,* 675 F.2d 1282, 1291 (D.C. Cir. 1982), the opportunity for notice and comment where there is no discretion is "unnecessary." *Id.* (quoting 5 U.S.C. 553(b)(B)). The Court further stated that notice and comment for such a nondiscretionary action "might even have been 'contrary to the public interest,' given the expense that would have been involved in a futile gesture." *Id.* See also *Lake Carriers' Ass'n* v. *E.P.A.,* 652 F.3d 1, 10 (D.C. Cir. 2011) (notice and comment rulemaking "would have served no purpose" where EPA lacked the authority to amend or reject the conditions at issue).[58]

69. In the context of the VA IFR, the Department used this rationale to find "good cause" to waive both notice-and-comment rulemaking *and* negotiated rulemaking. The Department can and should do the same here.

[58] 84 Fed. Reg. 65,005–06.

70. Alternatively, if the Department disagrees, because the negotiated rulemaking process is time intensive and would far outlast the current repayment freeze, the Department can still waive the negotiated rulemaking requirement but offer a brief period for public comment, aiming to complete the rulemaking and effectuate a Final Rule before the repayment freeze ends.

71. The economic fallout from the COVID-19 pandemic provides further good cause for bypassing negotiated rulemaking in order to provide automatic relief to entitled borrowers before the payment freeze ends. Borrowers who are totally and permanently disabled and saddled with debt are among the most in need of swift economic relief.[59] Because TPD relief allows only for a discharge of the borrower's outstanding balance, these borrowers would be unable to recoup payments made while the lengthy negotiated rulemaking process plays out. They should not be required to continue making payments that they cannot recover, on loans that the Department knows they do not owe, while a lengthy negotiated rulemaking process takes place.

72. To the extent the Department believes that the SSA Matching Agreement mandates the Department to require borrowers to submit an application, it does not.[60] Here, where the Department has information in its

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[59] *See* Lombardo and Turner, *supra* note 38 (explaining that, as of June 2019, 225,000 borrowers who had matched through the SSA process had already defaulted on their loans, and many were having their disability checks garnished); *see also* Nat'l Council on Disability, *National Disability Policy: A Progress Report* at 11 (Oct. 26, 2017) ("[P]eople with disabilities live in poverty at more than twice the rate of people without disabilities."), *available at:* https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

[60] *See* SSA Matching Agreement at 9 ("SSA agrees that the information produced by the match may be used by ED for necessary follow-up actions essential to the TPD program, as well as when required by law.").

possession that it has already stated constitutes "proof" of a borrower's eligibility to a constitutionally protected property right, due process *requires* the Department to refrain from collecting any additional repayments and to immediately discharge the debt. Separately, section 504 of the Rehabilitation Act and the Department's implementing regulations, *see supra* note 8, demand that the Department not employ a method of administration that impairs the accomplishment or the purposes of a program or activity or impedes access to a government benefit in violation of section 504 of the Rehabilitation Act and the Department's implementing regulations. That is precisely what the Department is doing here. Moreover, as applied to borrowers with disabilities whose eligibility for a TPD discharge has been definitively established by SSA, it is "essential to the TPD program" to ensure that they receive the relief that they are entitled to under the law.

73. Even if the Department chose to interpret the SSA Matching Agreement as requiring use of an application, it is not a serious impediment as it can be modified at any time.[61]

There is Good Cause to Waive Negotiated Rulemaking to Eliminate the Income Monitoring Period Before the Payment Freeze Expires

74. There is also good cause to waive negotiated rulemaking and the notice and comment requirement with respect to changes to the post-discharge monitoring period. As discussed above, the HEA does not require a post-discharge monitoring

[61] *Id.* at 14 ("The parties may modify this Agreement at any time by a written modification, agreed to by both parties and approved by the [Data Integrity Board] of each agency.").

period.[62] Thus, the Department has the authority to eliminate the monitoring period for borrowers identified through the SSA match.[63]

75. Importantly, the elimination of the application requirement for borrowers who have matched must be finalized in tandem with elimination of the monitoring period because the two issues are inextricably linked. It would cause enormous confusion—at a great harm to the "public interest," 5 U.S.C. § 553(b)(3)(B)—for the Department to automatically discharge debt for hundreds and thousands of borrowers and then require those same borrowers to submit to a monitoring period that they may not know exists. Such an approach would be contrary to the public interest and defeat the purpose of the TPD discharge right.

76. Even when borrowers take the affirmative step to apply, the monitoring period is causing tens of thousands of borrowers to have their loans reinstated not because of fraud in the system, but for the simple failure to fill out paperwork. Indeed, as set forth above, of the first 200,000 borrowers identified through the SSA match who applied for and received TPD discharges, 44,000 had their loans reinstated due to basic paperwork issues.[64]

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[62] 20 U.S.C. § 1087(a)(1) ("The Secretary *may* develop such safeguards as the Secretary determines necessary to prevent fraud and abuse" and "the Secretary *may* promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection. . .") (emphasis added).

[63] In December 2019, Congress added an "automatic income monitoring" section to the HEA's TPD provisions. *See* 20 U.S.C. § 1087(a)(3). The new section requires the Secretary to establish and implement procedures to use IRS tax return information in order to determine continued eligibility for a TPD discharge during the monitoring period. The provision does not require a monitoring period, but rather requires automatic income monitoring where there is one. To the extent the monitoring period is not eliminated for borrowers who apply for TPD relief based on a doctor's certification, this new automatic monitoring provision would apply.

[64] *See supra* ¶ 47. In addition, according to the 2016 GAO Report: in fiscal year 2014, of the 62,303 borrowers that had their loans reinstated, 61,074 of them (or 98%) were due to failure to submit an

77. The Department recognized these systemic flaws when, on March 29, 2021, it waived the monitoring period for the duration of the pandemic.[65]

78. If the Department were to provide automatic relief but keep the monitoring period in place, it is possible that hundreds of thousands of borrowers would have their loans reinstated, defeating the entire purpose of streamlining the process while simultaneously creating an unnecessary administrative nightmare.

79. Good cause here is sufficient to waive both negotiated rulemaking and notice and comment rulemaking. Nevertheless, as with elimination of the application requirement, the Department could still provide an abbreviated opportunity for the public to comment on a NPRM, while waiving negotiated rulemaking.[66]

80. Finally, even if the Department determined that it lacked good cause to eliminate the monitoring period—which it does not—the FUTURE Act eliminates any roadblock to relief presented by the monitoring period.

81. Guided by the FUTURE Act, the Department is in the process of automating the post-discharge monitoring period.[67] To the extent the Department is not prepared to implement the FUTURE Act before the freeze on the monitoring period ends, *see supra* ¶ 49, it could provide automatic TPD discharges to borrowers

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annual income verification form. The percentage was the same in 2015. *See* 2016 GAO Report at 35, Fig. 10.

[65] *See supra* ¶ 48.

[66] With respect to the effective date of the Final Rule proposed herein, neither the "Master Calendar" provision in the HEA, 20 U.S.C. § 1089(c)(1), the APA's effective date requirements, 5 U.S.C. § 553(d)(1), nor the Congressional Review Act, 5 U.S.C. § 808, would prevent the rule from going into effect immediately upon publication in the Federal Register. *See* Elson, *supra* note 14 at 5 & n.36 (discussing each provision).

[67] *See supra* ¶ 49.

who match through the SSA process and continue the monitoring freeze until implementation of the automatic monitoring required by the FUTURE Act is in place.

82. Indeed, this is precisely the approach the Trump Administration described in a letter to Student Defense and others dated June 22, 2020. In that letter, then Deputy Under Secretary Diane Jones stated: "With the December 2019 enactment of the [FUTURE ACT], the Department has begun assessing how the newly amended section 6103 of the Internal Revenue Code could potentially facilitate automatic discharges for SSA-matched borrowers by streamlining the post-discharge income monitoring requirement."[68] The Trump Administration did not believe the monitoring period was a roadblock to providing automatic TPD relief for borrowers who match through the SSA process, and the Biden Administration should not either.

CONCLUSION

83. For the foregoing reasons, Student Defense, CLASI, and JIA petition the Department to promptly provide relief to borrowers identified by SSA as entitled to a TPD discharge. Petitioners believe that the Department can and should waive negotiated rulemaking and the comment period required by section

[68] *See* Letter from Diane Jones, Delegated the Duties of Under Secretary, to Alex Elson, Student Defense (June 22, 2020), attached hereto as Exhibit B. *See also* Cory Turner, *Letters Urge Betsy DeVos To Erase Student Loans For Borrowers With Disabilities*, National Public Radio (Mar. 3, 2020) ("The Department's current implementing regulations require it to receive an application before completing a civilian [total and permanent disability] discharge, but we are interested in providing automatic discharge to these borrowers and believe the FUTURE Act makes this a possibility. . . ."), *available at:* https://www.npr.org/2020/03/03/811170628/letters-urge-betsy-devos-to-erase-student-loans-for-borrowers-with-disabilities.

553 of the Administrative Procedure Act or, in the alternative, waive negotiated rulemaking and immediately issue a NPRM with a brief comment period that proposes to: (i) eliminate the need for a TPD application and grant automatic discharges to all individuals who have matched as TPD-eligible through the SSA process and (ii) eliminate the three-year post-discharge monitoring period. Regardless of the means chosen, the Department can and should complete this action—and publish a Final Rule—before September 30, 2021, when the student loan payment freeze is set to expire and hundreds of thousands of entitled borrowers will be once again forced into repayment on loans the Department knows they do not legally owe.

Respectfully submitted,

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EXHIBIT A

100 DAY DOCKET
STUDENT DEFENSE

Action Memorandum

Automating the Discharge of Federal Student Loan Debt for Individuals who are Totally and Permanently Disabled

(Revised December 14, 2020)

By Alex Elson

DECEMBER 2020

Action Memorandum

Automating the Discharge of Federal Student Loan Debt for Individuals who are Totally and Permanently Disabled (Revised December 14, 2020)

I. Summary

Under the Higher Education Act ("HEA"), student loan borrowers who are "totally and permanently" disabled are entitled to a complete discharge of their federal student loans.[1] But under current practices, even after the Social Security Administration ("SSA") determines that an individual is eligible for such a discharge, the U.S. Department of Education ("Department") requires a borrower to go through additional hoops. Rather than using information shared between agencies to automate the process after an SSA determination, the Department forces borrowers to separately apply for a total and permanent disability ("TPD") discharge. As a result, and because of this additional hurdle, nearly 70% of borrowers identified by SSA as eligible for relief (approximately 400,000 borrowers) had not applied for, let alone received, the relief to which they are entitled.[2]

In order to promptly provide relief to these borrowers, before student loan payments are once again due, the Department should waive negotiated rulemaking and immediately issue a notice of proposed rulemaking ("NPRM") with a thirty-day comment period that proposes to: (i) eliminate the need for a TPD application[3] and grant automatic discharges to all individuals who have matched as TPD-eligible through the SSA data ("SSA matches") and (ii) eliminate the three-year post-discharge monitoring period.[4] These changes could provide an estimated $14 billion in student loan discharges to approximately 400,000 student loan borrowers with disabilities who are not receiving the relief to which they are entitled.[5]

II. Background and Current State

Under the HEA, student loan borrowers with total and permanent disabilities are entitled to a discharge of their outstanding debt.[6] Borrowers with FFEL Program loans, Direct Loans, and Perkins Loans are entitled to the discharge.[7] Borrowers are considered to have a total and permanent disability if they are "unable to engage in any substantial gainful activity," which relates to earning income, by reason of any medically determinable physical or mental impairment that can be expected to result in death, expected to last for a continuous period of sixty months, or has lasted for a continuous period of sixty months.[8]

Pursuant to 2013 changes to the Department's TPD regulations, an SSA designation of "Medical Improvement Not Expected" ("MINE") qualifies a borrower for TPD relief.[9] Borrowers are also considered to have a total and permanent disability if they have been determined by the Secretary of Veterans Affairs ("VA") to be unemployable due to a service-connected condition.[10] Generally, borrowers will apply for a TPD discharge based on a doctor's certification, certain disability documentation or identification from the SSA, or a VA determination that the borrower is unemployable due to a service-connected condition.

As a practical matter, the Department regularly receives lists of borrowers who are eligible for TPD discharges thanks to information-sharing agreements signed with the VA (under a program announced in the Trump Administration)[11] and with SSA (under a program initiated in the Obama Administration).[12] The Department then notifies these borrowers—hundreds of thousands of individuals—that they are eligible for relief. According to data the Department provided to the National Student Legal Defense Network ("Student Defense") through the Freedom of Information Act ("FOIA"), as of November 2019, 571,527 borrowers matched through the SSA process alone.[13] But most of these borrowers fail to seek relief even though the Department has sent them notices: according to the Department's response to the Student Defense FOIA, as of November 2019, 353,445 SSA-matched borrowers, or over 60%, had not received the relief to which they are entitled.

When borrowers fail to apply, and thus fail to receive the discharge, but are delinquent in repayment, the Department

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* Alex Elson is Senior Counsel and a co-founder of the National Student Legal Defense Network ("Student Defense"). Alex was one of the original attorneys hired by the U.S. Department of Education to establish its borrower defense program, designed to provide student loan relief to borrowers who were subject to unlawful deception by their colleges.

When borrowers fail to apply, and thus fail to receive the discharge, but are delinquent in repayment, the Department often sends these individuals to forced collections and garnishes their disability benefits, all for debts they should no longer owe.

often sends these individuals to forced collections and garnishes their disability benefits, all for debts they should no longer owe. If the facts present themselves, the Department's alternative means of involuntary collections may also be used against these borrowers.

After years of bipartisan public pressure, in August 2019 President Trump signed a Presidential Memorandum directing Secretary DeVos to automatically discharge federal student loan debt for veterans identified as eligible by the VA, explaining that the TPD application process was "prevent[ing] too many of our veterans from receiving the relief for which they are eligible" which, in turn, was "frustrat[ing] the intent of the Congress that their Federal student loan debt be discharged."[14]

Approximately three months after the Presidential Memorandum, "Trump Administration lawyers" determined that the agency could not legally move ahead with automatic discharges unless they rewrote the TPD regulations to allow for relief without an application.[15] On November 26, 2019, the Department published an IFR to amend the Perkins, FFEL, and Direct Loan TPD regulations to allow for automatic discharges for VA matches ("VA IFR").[16]

According to the VA IFR, the TPD application process was "a barrier that creates significant and unnecessary hardship for our disabled veterans" and removing it was therefore "a pressing problem of national concern."[17] Pursuant to the VA IFR, automatic TPD discharges for veterans appear to be back on track.

Although the same principle applies to approximately 400,000 SSA matches who have not received relief, the Trump Administration has not taken any steps to automatically discharge their loans.

In general, the Department treats determinations made by SSA differently from those made by the VA in one key respect: post-discharge monitoring requirements. Once the Department discharges a debt due to a VA determination of disability, there is no further monitoring of the borrower, seemingly due to a statutory provision that a borrower who is eligible for a TPD discharge due to a determination by the VA "shall not be required to present additional documentation…"[18] But the HEA also provides that "[t]he Secretary *may* develop" safeguards to prevent fraud and abuse involving non-VA disability determinations.[19]

In response to a 1999 Department of Education Inspector General report finding a large percentage of likely fraudulent discharges,[20] the Department took a series of steps to respond to the fraud. The processes have evolved over the years, but since 2010, the Department requires borrowers to be monitored for three years after discharge, during which time the loans can be reinstated for any of the following three reasons: (i) the borrower has earnings beyond a minimally acceptable amount; (ii) the borrower has incurred new federal student loans; or (iii) SSA changes its disability determination.[21] If the borrower does not satisfy these reinstatement period requirements, the "Secretary reinstates [the] borrower's obligation to repay" the previously discharged loan.[22] The Department will also reinstate a borrower's loans if the borrower fails to provide the required information during the monitoring period, though the regulatory text is ambiguous on this point.[23]

There is widespread support to extend automatic TPD relief to SSA matches. Student Defense, along with a bipartisan coalition in Congress, has called upon the Trump Administration to do so.[24] In response to a March 3, 2020 letter from Student Defense and over 30 other advocacy

groups,[25] the Trump Administration signaled interest in providing such relief, stating to NPR:

> The Department's current implementing regulations require it to receive an application before completing a civilian [total and permanent disability] discharge, but we are interested in providing automatic discharge to these borrowers and believe the FUTURE Act makes this a possibility — but will require the department to undergo negotiated rulemaking.[26]

Although the Trump Administration did not act on this "interest," the Biden Administration should. There are simply no significant or persuasive reasons not to extend the automatic relief to all borrowers—veterans or civilians—who share the statutory right to relief and who have been identified by the federal government as eligible.

III. Proposed Action

In an earlier version of this memo, we suggested that the Department could take a series of executive actions to effectuate relief to eligible borrowers. We suggested that the Department immediately issue an Interim Final Rule ("IFR") to suspend all collection activity for individuals who have "matched," and then commencing a negotiated rulemaking to grant automatic discharges to those individuals and eliminate the post-discharge monitoring period.

Although we continue to believe that our prior memorandum provides the Department with a path towards affording affected borrowers (*i.e.*, borrowers with a MINE designation) the relief to which they are entitled, it was written at a time when the "freeze" on student loan repayment—in light of the COVID-19 crisis—was set to expire on December 31, 2020. Given the growth of the pandemic, and the extent to which we anticipate student loan repayment problems continuing into 2021, we have conducted additional thinking about how to expedite relief to borrowers, in a manner that remains consistent with governing law.

At the time of this writing, the Trump Administration has extended the "freeze" on student loan repayments through January 31, 2020.[27] Based on public reporting, we presume—and base our analysis upon the presumption—that the incoming administration will continue that freeze, although for an unknown period of time. Given the freeze, an IFR suspending collection appears to be an unnecessary step for the Department to take. Nevertheless, the path towards relief for disabled borrowers must continue.

Perhaps the most expeditious approach to consider relief for disabled borrowers, and to afford such relief before the expiration of any further freeze, is for the Department to promptly issue an NPRM proposing to (i) grant automatic discharges to SSA matches by eliminating the need for a TPD application and (ii) eliminating the three-year post-discharge monitoring period. This NPRM can be relatively short—although it will need to provide a regulatory impact analysis ("RIA") that estimates and quantifies burden. We suspect that an NPRM could be prepared and issued within the first 30-45 days of the new Administration.

Although the Department is ordinarily required by the HEA to use negotiated rulemaking to develop a proposed rule for programs authorized under Title IV, it has the statutory authority to bypass that process when it finds that "applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest."[28] In light of the express cross-reference to, and incorporation of, section 553 of the APA, 5 U.S.C. § 553, this is often referred to as the "good cause" requirement.

"Good cause" under Section 553 of the APA "is determined on a 'case-by-case' basis, based on the 'totality of the factors at play.'" *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (citing *United States v. Valverde*, 628 F.3d 1159, 1164 (9th Cir. 2010)); *see also Sorenson Commc'ns Inc. v. F.C.C.*, 755 F.3d 702, 706 (D.C. Cir. 2014) (explaining that the good cause analysis is an "inevitably fact-or-context dependent" inquiry). The good cause exemption "excuses agencies from the notice and comment requirement—and, by extension, excuses the Department from the negotiated rulemaking requirement for Title IV regulations—only 'in emergency situations, or where delay could result in serious harm.'" *Bauer v. DeVos*, 325 F. Supp. 3d 74, 96–97 (D.D.C. 2018) (quoting *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004)); *see also Sorenson Commc'ns Inc.*, 755 F.3d at 706 (explaining that good cause exists "where delay would imminently threaten life or physical property"); *California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018) (holding that good cause may be found where "delay would do real harm to life, property, or public safety").

Here, there is good cause to waive negotiated rulemaking with respect to the need for an application because the Department has already determined that once it becomes aware that SSA has made a certain determination, the Department has the necessary "proof of [the] borrower's TPD" eligibility.[29] In 2016, the Department announced that it had been working closely with SSA to "complete a data match to identify federal student loan borrowers" who have the MINE designation which "qualifies them for loan forgiveness under the TPD discharge program."[30] Thus, as a result of this ongoing data-match program, described above, the Department has already determined that a particular category of borrowers are entitled to a loan discharge, and already knows—from SSA—which individual borrowers are part of that category.

Accordingly, as the Department determined in connection with the VA match, "there will no longer be a need for" an application from a borrower, because the Department no longer has discretion to deny an SSA-matched-borrower's application for a TPD discharge. Thus, the Department's prior statements, made in connection with the VA IFR, are prescient:

> As the Court found in *Metzenbaum* v. *Federal Energy Regulatory Commission,* 675 F.2d 1282, 1291 (D.C. Cir. 1982), the opportunity for notice and comment where there is no discretion is "unnecessary." *Id.* (quoting 5 U.S.C. 553(b)(B)). The Court further stated that notice and comment for such a nondiscretionary action "might even have been 'contrary to the public interest,' given the expense that would have been involved in a futile gesture." *Id.* See also *Lake Carriers' Ass'n* v. *E.P.A.,* 652 F.3d 1, 10 (D.C. Cir. 2011) (notice and comment rulemaking "would have served no purpose" where EPA lacked the authority to amend or reject the conditions at issue).[31]

In the context of the VA IFR, the Department used this rationale to find "good cause" to waive both notice-and-comment rulemaking *and* negotiated rulemaking. These are, of course, separate analyses; and good cause to waive one requirement should not be concomitant with good cause to waive the other. Here, because the negotiated rulemaking process is time intensive, and may outlast the current repayment freeze, and in light of the discussion above, we believe that the Department can waive the negotiated rulemaking requirement. But for the freeze, the Department would likely have good cause to waive the notice and comment requirement, as it did with respect to the VA IFR. Nevertheless, the freeze has afforded the opportunity to balance the interests (providing required discharges to eligible borrowers immediately vs. engaging in the required administrative processes) and provide an opportunity for the public to comment on a NPRM.

The economic fallout from the COVID-19 pandemic provides further good cause for bypassing negotiated rulemaking in order to provide automatic relief to entitled borrowers before the freeze ends. Borrowers who are totally and permanently disabled and saddled with debt are among the most in need of swift economic relief.[32] Because TPD relief allows only for a discharge of the borrower's outstanding balance, these borrowers would be unable to recoup payments made while the lengthy negotiated rulemaking process plays out. They should not be required to continue making payments that they cannot recoup after-the-fact, on loans that the Department knows they do not owe, while a lengthy negotiated rulemaking process takes place.

There is also good cause to waive negotiated rulemaking with respect to changes to the monitoring period. As discussed above, the HEA contemplates, but does not require, a post-discharge monitoring period.[33] Thus, the Department has the authority, through a new rulemaking, to eliminate the monitoring period for SSA matches.[34]

Importantly, the elimination of the application requirement for borrowers who have matched must be conducted in tandem with elimination of the monitoring period because the two issues are inextricably linked. It would cause enormous confusion—at a great harm to the public interest—for the Department to provide automatic discharges to 400,000 borrowers and then require those borrowers to submit to a monitoring period that they may not know exists. Even when borrowers take the affirmative step to apply, the monitoring period is causing tens of thousands of borrowers to have their loans reinstated not because of fraud in the system, but for the simple failure to fill out paperwork.[35] If the Department were to keep the monitoring period in place, it is possible that hundreds of thousands of borrowers would have their loans reinstated, defeating the

entire purpose of this effort while simultaneously creating an unnecessary administrative nightmare. Regardless, because of the timing issues created by the freeze on student loan repayments, a balance of the factors suggests that the Department should still provide an opportunity for the public to comment on a NPRM.

Finally, there is a question of the effective date – which has three distinct components.

First, under the "Master Calendar" provision in the HEA, "regulatory changes initiated by the Secretary affecting the programs under [Title IV] that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date." 20 U.S.C. § 1089(c)(1). In effect, if this provision applied, any changes that the Department finalized before November 1, 2021 would not take effect until July 1, 2022. And while the provision allows for "early implementation," 20 U.S.C. § 1089(c)(2)(B), designating a regulation for early implementation permits an "entity" to "choose[] to implement a regulatory provision prior to the effective date" under the Master Calendar rule.

With respect to the Master Calendar requirement, the Department should be guided by its actions with respect to the VA IFR, in which it did not subject the regulatory change to the master calendar rule. In that rulemaking, the Department did not even mention the Master Calendar requirement when discussing the effective date of the rule. Such an approach is consistent with what we believe to be the best reading of the Master Calendar requirement, *i.e.*, it only applies to situations in which it is possible for the Secretary—exercising her authority under 20 U.S.C. § 1089(c)(2)—to designate a rule for early implementation. Under such a reading, the requirement applies to regulations that impact entities that could early implement a rule, but does not apply to purely borrower-facing provisions that have no impact on any "entity." Regardless, even if the Master Calendar requirement does apply, the Department should be guided by its interpretation of the early implementation language in other contexts, and simply designate the rule for early implementation—even where there is no "entity" that can choose to implement the regulatory change before the presumptive July 1 effective date.[36]

Second, the APA also requires regulations to be published at least 30 days before their effective date, but excepts from that requirement rules which grant or recognize an exemption or relieve a restriction. 5 U.S.C. § 553(d)(1). Here too, the Department should take guidance from the VA IFR, where the Department noted that it was taking action to "relieve restrictions on veterans by removing unintended administrative burdens[.]"[37] Because the same justification applies to borrowers with disabilities, who will have unintended administrative burdens removed with respect to the post-match application, the 30-day requirement in the APA need not apply.

Third, the Congressional Review Act requires that a major rule may take effect no sooner than 60 calendar days after an agency submits a CRA report to Congress or the rule is published in the Federal Register, whichever is later.[38] Nevertheless, the CRA also provides that if the agency has "good cause"—and includes within the rule a "brief statement of the reasons therefore" that "notice and public procedure" is "impracticable, unnecessary, or contrary to the public interest," such a rule can take effect upon publication in the Federal Register.[39] In the VA IFR, the Department expressly tied its "good cause" finding to dispense with notice and comment rulemaking to the good cause requirement under the CRA.[40] Putting aside the question of whether good cause to dispense with one procedure *de facto* constitutes good cause for dispensing with other components, in this case, for the reasons stated above with respect to the impact on borrowers with disabilities, the agency would have good cause to ensure that the rule takes effect before the expiration of the current "freeze."

IV. Risk Analysis

We see little risk in eliminating the post-discharge monitoring period and need for a TPD application for SSA matches, and in granting the automatic discharges. While it is possible that some will raise concerns of borrower-fraud without the monitoring period for SSA matches, we believe the SSA MINE designation process provides a sufficient guardrail and see little risk of a party being injured by the rule proposed here.[41] Politically, we do not see pushback on efforts to help Americans with permanent disabilities.

Endnotes

1 HEA § 437(a); 20 U.S.C. § 1087(a).

2 As of February 2020, "approximately 589,000 borrowers were identified through the SSA match process, which began in April 2016. Of those borrowers, more than 227,000 borrowers with loans totaling $8.2 billion have been approved for discharges." *See* U.S. Department of Education Responses to Questions for the Record Submitted by Senator Patty Murray Following the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies March 5, 2020 Hearing to Review of the FY2021 Budget Request for the U.S. Department of Education at 40, *available at* https://www.help.senate.gov/download/wordmurrayqfrs5mar20hearingonfy21edbudget. Accordingly, as of February 2020, 362,000 borrowers were eligible for, but had not received, TPD relief. Subsequently, on November 9, 2020, the Office of the Inspector General for the SSA issued a report finding that SSA erroneously omitted 36,248 borrowers who should have matched through the SSA process, and SSA agreed with the finding. *See* Office of the Inspector General, Social Security Administration Audit Report, "Social Security Administration Beneficiaries Eligible for Total and Permanent Disability Federal Student Loan Discharge,"(Nov. 9, 2020), *available at* https://www.oversight.gov/node/92106. Therefore, while some borrowers may have applied since February 2020, it appears that nearly 400,000 borrowers have matched through the SSA process but not received relief.

3 *See* 34 C.F.R. § 685.213(b)(1) ("To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary.").

4 *See* 34 C.F.R. § 685.213(b)(7)-(8).

5 This estimate is based on the Department's reporting that the 227,00 borrowers who matched through the SSA process and successfully applied for TPD relief received $8.2 billion in discharges, or an average of $36,123.35 per borrower. *See supra* note 2.

6 HEA § 437(a); 20 U.S.C. § 1087(a).

7 34 C.F.R. §§ 674.61 (Perkins), 682.402(c) (FFEL), 685.213 (Direct Loan).

8 HEA § 437(a)(1); 20 U.S.C. § 1087(a)(1).

9 *See* 77 Fed. Reg. 66,088, 66,091-93 (Nov. 1, 2012).

10 HEA § 437(a)(2); 20 U.S.C. § 1087(a)(2).

11 *See* Press Release, U.S. Dep't of Educ., "U.S. Department of Education and U.S. Department of Veterans Affairs Team Up to Simplify Student Loan Discharge Process for Disabled Veterans" (Apr. 16, 2018), *available at:* https://www.ed.gov/news/press-releases/us-department-education-and-us-department-veterans-affairs-team-simplify-student-loan-discharge-process-disabled-veterans.

12 *See* Press Release, U.S. Dep't of Educ., "U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities" (Apr. 12, 2016), *available at:* https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities.

13 *See* U.S. Department of Education, Final Response to FOIA Request No. 20-00411-F (Jan. 29, 2020), *available at:* https://www.defendstudents.org/foia/disability#matchingagreements.

14 *See* Presidential Memorandum on Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans (Aug. 21, 2019), *available at:* https://www.whitehouse.gov/presidential-actions/presidential-memorandum-discharging-federal-student-loan-debt-totally-permanently-disabled-veterans/.

15 *See* Michael Stratford, "Trump pledge to forgive disabled veterans' student loans delayed — at Education Department," *Politico* (Nov. 21, 2019), *available at:* https://www.politico.com/news/2019/11/21/trump-disabled-veterans-student-loans-072750. We do not know whether this determination was made by the Department of Education or elsewhere in the executive branch.

16 *See* 84 Fed. Reg. 65,000 (Nov. 26, 2019), *available at:* https://www.govinfo.gov/content/pkg/FR-2019-11-26/pdf/2019-25813.pdf.

17 *Id.* at 65,002.

18 20 U.S.C.A. § 1087(a)(2) (language added August 14, 2008).

19 20 U.S.C.A. § 1087(a)(1) (emphasis added) (language added July 1, 2010).

20 U.S. Dep't of Educ., Office of Inspector Gen., A06-80001, Improving the Process for Forgiving Student Loans (June 7, 1999).

21 34 C.F.R. § 685.213(b)(7)(i).

22 *Id.*

23 34 C.F.R. § 685.213(b)(8). The regulatory text does not specifically require reinstatement, but rather, in a section titled Borrower s responsibilities after a [TPD] discharge, provides that, during the monitoring period, the borrower must provide the Secretary with the required information. The preamble to the 2012 rule states that a borrower who does not provide the required documentation (particularly income documentation) will have his or her loans reinstated and will be required to resume payment on the loan. 77 Fed. Reg. at 66,097; *see also* FSA Website at https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/disability-discharge#postdischarge ("During the postdischarge monitoring period, Nelnet will require you to submit documentation of your annual earnings from employment on a form that Nelnet will provide. If you don't submit this form with the required documentation of your income, your obligation to repay your loans or complete your TEACH Grant service obligation will be reinstated."). The Department further explained that "a large proportion of discharged borrowers end up with their loans reinstated because of failure to submit adequate information during the post-discharge monitoring period." 77 Fed. Reg. at 66,119.

24 *See* Press Release, "Sen. Coons leads bipartisan effort to urge Trump Administration to immediately discharge outstanding federal student loans for permanently disabled Americans," (Oct. 9, 2019), *available at:* https://www.coons.senate.gov/news/press-releases/sen-coons-leads-bipartisan-effort-to-urge-trump-administration-to-immediately-discharge-outstanding-federal-student-loans-for-permanently-disabled-americans.

25 *See* Letter from Advocacy Groups to Sec. DeVos (Mar. 3, 2020), *available at:* https://www.defendstudents.org/news/coalition-urges-devos-to-provide-critical-loan-relief-to-350000-americans-with-disabilities.

26 Cory Turner, "Letters Urge Betsy DeVos To Erase Student Loans For Borrowers With Disabilities," *National Public Radio* (March 3, 2020), *available at:* https://www.npr.org/2020/03/03/811170628/letters-urge-betsy-devos-to-erase-student-loans-for-borrowers-with-disabilities.

27 On March 27, 2020, Congress passed and President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), which suspended all student loan payments until September 30, 2020. On August 8, 2020, President Trump issued a memorandum directing the Department to extend CARES Act student loan relief through December 31, 2020. On December 4, 2020, Secretary DeVos announced a further extension of the student loan forbearance period to run through January 31, 2021. *See* Press Release, U.S. Dep't of Educ., "Secretary DeVos Extends Student Loan Forbearance Period Through January 31, 2021, in Response to COVID-19 National Emergency" (Dec. 4, 2020), *available at:* https://www.ed.gov/news/press-releases/secretary-devos-extends-student-loan-forbearance-period-through-january-31-2021-response-covid-19-national-emergency.

28 5 U.S.C. § 553(b)(B). *See also* 20 U.S.C. § 1098a(b)(2) ("All regulations pertaining to [Title IV of the HEA] . . . shall be subject to a negotiated rulemaking . . . unless the Secretary determines that applying such a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest (within

the meaning of section 553(b)(3)(B) of title 5), and publishes the basis for such determination in the Federal Register at the same time as the proposed regulations in question are first published."); *Nat'l Educ. Ass'n v. DeVos*, 379 F. Supp. 3d 1001, 1020 (N.D. Cal. 2019) (discussing the HEA's "good cause" requirement).

29 Final Regulations, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 77 Fed. Reg. 66088, 66091 (Nov. 1, 2012).

30 *See* Press Release, U.S. Dep't of Educ., "U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities" (Apr. 12, 2016), *available at:* https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities.

31 84 Fed. Reg. 65,005-06.

32 *See* Clare Lombardo and Cory Turner, "Student Loan Borrowers With Disabilities Aren't Getting Help They Were Promised" *National Public Radio* (Dec. 4, 2019) (explaining that, as of June 2019, 225,000 borrowers who had matched through the SSA process had already defaulted on their loans, and many were having their disability checks garnished), *available at:* https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve; *see also* Nat'l Council on Disability, National Disability Policy: A Progress Report at 11 (Oct. 26, 2017) ("[P]eople with disabilities live in poverty at more than twice the rate of people without disabilities."), *available at:* https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

33 20 U.S.C. § 1087(a)(1) (The Secretary *may* develop such safeguards as the Secretary determines necessary to prevent fraud and abuse" and "the Secretary *may* promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection. . .") (emphasis added).

34 In December 2019, Congress added an "automatic income monitoring" section to the HEA's TPD provisions. *See* 20 U.S.C. § 1087(a)(3). The new section requires the Secretary to establish and implement procedures to use IRS tax return information in order to determine continued eligibility for a TPD discharge during the monitoring period. The provision does not require a monitoring period, but rather requires automatic income monitoring where there is one. To the extent the monitoring period is not eliminated for borrowers who apply for TPD relief based on a doctor's certification, this new automatic monitoring provision would apply.

35 *See* Lombardo and Turner, *supra* note 32. According to a 2016 GAO Report: in fiscal year 2014, of the 62,303 borrowers that had their loans reinstated, 61,074 of them (or 98%) were due to failure to submit an annual income verification form. The percentage was the same in 2015. *See* GAO Report: "Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief" at 35, Fig. 10 (Dec. 2016), *available at:* https://www.gao.gov/assets/690/681722.pdf.

36 The Department has taken such an approach in a number of other cases. *See, e.g.*, Final Regulations, Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 80 Fed. Reg. 67,204, 67,205 (Oct. 30, 2015) (designating for early implementation regulations specific to the REPAYE repayment plan); 81 Fed. Reg. 75,926, 75,927 (Nov. 1, 2016) (designating the automatic closed school discharge regulation for early implementation).

37 84 Fed. Reg. at 65,006.

38 5 U.S.C. § 801(a)(3)(A).

39 5 U.S.C. § 808.

40 84 Fed. Reg. at 65,006 ("As stated above, the Department has found good cause to issue this rule without notice and comment rulemaking and thus we are not including the 60-day delayed effective date in this rule.").

41 Because SSA has already gone through its process to designate these borrowers as "Medical Improvement Not Expected," the risk of fraud in the system is low. SSA's procedures and criteria for setting a MINE designation are available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0426525045. *See also* 77 Fed. Reg. at 66,091-93 (describing SSA's MINE designation process and noting that such designations are reviewed by SSA no less frequently than once every seven years and no more frequently than once every five years). There is no need for the Department (let alone borrowers) to shoulder the extensive burden and cost of imposing even more hurdles on borrowers SSA has already found qualify.

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EXHIBIT B

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDERSECRETARY

June 22, 2020

Mr. Alexander S. Elson
Senior Counsel
National Student Legal Defense Network
1015 15th Street, NW, Suite 600
Washington, DC 20005

Dear Mr. Elson:

Thank you for your letter to Secretary Betsy DeVos on behalf of 32 organizations regarding the discharge of federal student loans for civilian borrowers who are totally and permanently disabled. Your letter was forwarded to my office, and I am pleased to respond.

On August 21, 2019, President Donald J. Trump signed a Presidential Memorandum titled "Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans." This memorandum has significantly streamlined the process to discharge federal student loan debt for totally and permanently disabled veterans. Eligible veterans identified through the U.S. Department of Education's (Department's) data match with the U.S. Department of Veterans Affairs (VA) now have their federal student loan debt automatically discharged, unless they decide to opt out of the discharge.

In your letter, you urged the Department to extend the automatic discharge policy to disabled civilian borrowers who are identified through the Department's data match with the Social Security Administration (SSA). The Department understands the significance of this request and the impact the change would have on this vulnerable population. As such, we conducted the proper due diligence to assess the feasibility of extending the automatic discharge policy. Unfortunately, we determined that extending the policy to these individuals would require the Department to conduct negotiated rulemaking to change the applicable regulations, as they currently require an eligible borrower to submit an application to receive a discharge.

Extending the automatic discharge policy to disabled civilian borrowers also raises potential operational issues. For example, unlike VA-matched borrowers, SSA-matched borrowers must annually provide documentation of employment earnings, or lack thereof, for three years after their loans are discharged and are subject to having their discharged loans reinstated if they do not comply with this requirement. Therefore, it is particularly important for these individuals to fully understand the consequences of receiving a total and permanent disability discharge and any failure to comply with their income verification responsibility. For these reasons, we have determined that it is not appropriate, at this time, to automatically discharge loans for this population of borrowers.

With the December 2019 enactment of the Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE Act), Pub. L. No. 116-91, the Department has begun assessing how the newly amended section 6103 of the Internal Revenue Code could potentially facilitate automatic discharges for SSA-matched borrowers by streamlining the post-discharge

income monitoring requirement. We plan to reassess our decision concerning automatic discharges after we have implemented the FUTURE Act.

If you have further questions, please have your staff contact the Department's Office of Intergovernmental Affairs at (202) 401-3003.

Sincerely,

Diane Auer Jones
Principal Deputy Under Secretary
Delegated the Duties of Under Secretary