

March 3, 2020

The Honorable Betsy DeVos
Secretary of Education
400 Maryland Ave., SW
Washington, DC 20202

Mr. Andrew M. Saul
Commissioner of Social Security
6401 Security Boulevard
Baltimore, MD 21235

Dear Secretary DeVos and Commissioner Saul:

We write to you as Student Loan Ombudspersons for our respective states and the District of Columbia, on behalf of disabled Americans who are struggling to repay student loans yet qualify for loan discharge. Based on U.S. Department of Education reporting, you have identified and notified 53,343 disabled borrowers among our collective constituencies who may qualify for federal loan forgiveness, however, only 5,655 of those borrowers (about 10%) ultimately received a discharge.¹ Clearly there is a need for greater advocacy to bring relief to this population. We therefore urge you to do for these disabled civilian borrowers what the Executive Office has ordered for disabled veteran borrowers: automatically discharge student loans for eligible borrowers under the Total and Permanent Disability loan discharge program.

The Secretary of Education Has the Authority to Discharge Qualifying TPD Borrowers' Loans

Title IV of the Higher Education Act of 1965, which empowers the U.S. Department of Education (“Department”) to administer Federal financial aid in the form of loans and grants, provides that the Secretary of Education shall discharge the loans of any borrower who is “permanently and totally disabled” (“TPD”) or who is “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months[.]”² This is an important safeguard meant to ensure that any borrower who is unable, due to disability, to work and earn the income needed to repay his or her loan is released from the obligation to do so. Although the Higher Education Act permits the Secretary to develop standards for TPD

¹ Senator Patty Murray, “Questions Submitted By Senator Patty Murray,” *Senate HELP Committee*, (March 28, 2019): 82, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>

² Higher Education Act, 20 U.S.C. § 1087(a) (FFEL Program); *see* 20 U.S.C. §§ 1087e(a)(1) (Direct Loan Program), 1087dd(c)(1)(F) (Perkins Loan Program).

eligibility, the law is clear that upon meeting those conditions, a qualifying borrower's loans shall be discharged.³

However, the current implementation of the TPD program does not work for the population it is intended to help. The application process is onerous and requires information already available to the Federal government through the Social Security Administration (SSA). Difficulty meeting the annual documentation requirements for the post-discharge three-year monitoring period too often results in loan reinstatements for otherwise TPD-eligible borrowers. It is therefore critical that as Secretary you use your regulatory authority and access to borrower information to create the least onerous path to relief for this population, both as they apply for relief and to satisfy the monitoring requirements.

The Department's decision to exercise this authority and grant automatic discharge to disabled veterans earlier in 2019 is an example of how you can work to provide relief to borrowers without further burdening them with a cumbersome application process, which the Presidential Memoranda announcing veterans' automatic discharge acknowledged was "overly complicated and difficult and prevented too many of our veterans from receiving the relief for which they are eligible."⁴ The same is true for civilians with disabilities, and so we urge you now to expand this decision to include all totally and permanently disabled borrowers, as identified through SSA data.

TPD Borrowers Face Unique Challenges to Repayment and Discharge

The SSA's disability program is intended to replace income that is lost due to disability and an inability to work. For many disabled Americans, Social Security benefits comprise most of their income. According to the SSA's Faces and Facts of Disability Fact Sheet, at the beginning of 2019, the average monthly disability benefit was about \$1,234 to all disabled workers.⁵ SSA acknowledges that this is barely enough to keep an individual above the 2018 poverty level,⁶ and is therefore insufficient to cover the added cost of student loan payments. As recent National Public Radio reporting has made evident, Americans living with permanent disabilities are struggling to repay debt.⁷ Their situations are exacerbated by the fact that borrowers who default on their student loans may have their SSA benefits garnished, causing them to live in a state of extreme financial instability. The Department reported that as of the beginning of 2019, 11,821 borrowers whom it had identified as potentially TPD-eligible were still submitted to forced

³ See 20 U.S.C. §§ 1087(a) (FFEL Program), 1087e(a)(1) (Direct Loan Program), 1087dd(c)(1)(F) (Perkins Loan Program); see also 34 C.F.R. §§ 682.402(c) (FFEL Program), 685.213 (Direct Loan Program), 674.61(b) (Perkins Loan Program).

⁴ Donald J. Trump, "Presidential Memorandum on Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans," August 21, 2019, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-discharging-federal-student-loan-debt-totally-permanently-disabled-veterans/>.

⁵ "The Faces and Facts of Disability," *Social Security Administration*, May 2019, <https://www.ssa.gov/disabilityfacts/facts.html>.

⁶ *Id.*

⁷ Clare Lombardo and Cory Turner, "Student Loan Borrowers With Disabilities Aren't Getting Help They Were Promised," *National Public Radio* (Dec. 4, 2019), <https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve>.

collection on their Federal loan, either through wage garnishment or Treasury offset.⁸ Disability benefits are therefore withheld from disabled borrowers for the very reason that they were initially extended: an inability to work and earn wages that are sufficient to meet their basic costs and expenses.

Oftentimes disabled borrowers' disabilities make it difficult for them to collect and complete the necessary paperwork to demonstrate eligibility for loan discharge. This may be due to the disability itself, or to frequent medical treatment or visits to the hospital. As Persis Yu of the National Consumer Law Center put it, under the current TPD discharge process, which requires eligible borrowers to affirmatively apply for relief, "you have to work really hard to prove that you're unable to work."⁹ The same is true for the three-year monitoring period after TPD discharge, during which borrowers must submit documentation annually to confirm their TPD status or risk having their discharged loans reinstated. Although this period is intended to protect against fraudulent discharge applications, it has the effect of reinstating loans for disabled borrowers for whom the submission process is burdensome, or even due to mere paperwork errors.

These administrative hardships are unwarranted given that permanently disabled borrowers are entitled to have their loans discharged. Because the Department accepts Social Security Disability Insurance or Social Security Income as proof of eligibility for TPD discharge, it is especially tragic that so many eligible recipients continue to struggle to pay their loans under such avoidable circumstances, and that these sources of support are themselves subject to garnishment.

The Department's Attempts to Notify TPD-Eligible Borrowers Demonstrates Why Automatic Discharge Is Necessary

The challenge of applying for and receiving a TPD discharge is reflected in the data provided to Senator Patty Murray's office by the Department about its attempt in 2018 to identify TPD-eligible borrowers by matching Federal student loan recipients with SSA records for disability benefits recipients. However, rather than pursue automatic discharge after identifying potentially eligible borrowers, the Department still required disabled borrowers to affirmatively apply for relief. Based on the SSA matching, in the combined seven states and District of Columbia in which we serve as Ombudspersons, 53,343 disabled borrowers received notices from the Department that they may qualify for a TPD discharge; however, only 5,655 borrowers (about 10%) received a discharge.¹⁰ We believe that this demonstrates that the current system is not working in favor of the borrower and warrants an automatic discharge.

⁸ Senator Patty Murray, "Questions Submitted By Senator Patty Murray," *Senate HELP Committee*, (March 28, 2019): 82, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>.

⁹ Clare Lombardo & Cory Turner, "Student Loan Borrowers With Disabilities Aren't Getting Help They Were Promised," National Public Radio (Dec. 4, 2019), <https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve>.

¹⁰ Senator Patty Murray, "Questions Submitted By Senator Patty Murray," *Senate HELP Committee*, (March 28, 2019): 82, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>.

The recently enacted *FUTURE Act of 2019* takes steps toward automating the TPD discharge process, but more needs to be done. The *FUTURE ACT* promises to make the post-discharge monitoring process more streamlined for those approved for a TPD discharge, but it still requires borrowers to opt-in in order to have their tax information shared with the Department. This facilitates the post-discharge monitoring that TPD borrowers undergo but does not completely remove the barriers this population may face with respect to complying with paperwork requirements, nor does it simplify the process of applying for a TPD discharge itself.

We urge the Department to work with the SSA to implement a system that will allow the Secretary to accept information shared by the SSA that the borrower is permanently disabled for the purpose of granting the discharge, and to take any steps within the Department's and SSA's authority to minimize or eliminate the need for borrowers to proactively participate in the post-discharge monitoring process. For the TPD discharge program to bring its intended relief to disabled borrowers, the Department must take every step possible on behalf of qualifying borrowers and must proactively reduce the number of steps these borrowers must take themselves.

The Department Can Bring Enormous Relief to Disabled Borrowers

By following both the letter and the spirit of the Higher Education Act, the Department and SSA can leverage their combined resources and data to remove this considerable barrier for disabled Americans, who have documented and verifiable disabilities that prevent them from engaging in gainful employment and that entitle them to loan discharge. The Higher Education Act does not qualify this relief on borrowers' capacity to complete an application, and we urge you to meet eligible borrowers where they are by initiating a program of automatic discharge, as you have done for disabled veterans, and of automatic post-discharge monitoring. Importantly, automatic relief for disabled borrowers has bipartisan support in Congress and the support of disability advocacy groups as well.¹¹

We also ask the Department to remain mindful of disabled borrowers' unique needs and to ensure that any efforts to create and expedite automatic relief do not inadvertently replace one burden with another.

As states' Student Loan Ombudspersons, we have the privilege of communicating with and assisting student loan borrowers every day. There are identifiable steps for mass and automatic relief that we know to be both necessary and legal, and which are outlined in this letter. We appreciate your attention to this urgent matter and ask that you implement automatic discharge for permanently disabled borrowers as expeditiously as possible.

¹¹ Senator Chris Coons, "Sen. Coons leads bipartisan effort to urge Trump Administration to immediately discharge outstanding federal student loans for permanently disabled Americans," October, 9, 2019, <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>

Sincerely,



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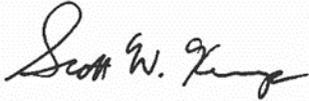
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