

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> In its response, the Department provided the following information:

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<sup>1</sup> HEA § 437(a)(1), 20 U.S.C. § 1087(a)(1).

<sup>2</sup> 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).

<sup>3</sup> 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>.

<sup>4</sup> *Id.*

<sup>5</sup> Student Defense’s FOIA request is attached hereto as Exhibit A.

<b>Total Individuals Matched<sup>6</sup></b>	<b>Total Claims Discharged</b>	<b>Total Amount Discharged</b>	<b>Total Claims NOT Discharged</b>	<b>Total Amount NOT Discharged</b>
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 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 that 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.<sup>7</sup> 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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<sup>6</sup> 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).

<sup>7</sup> 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*

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