



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

June 29, 2021

Secretary Cardona
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: ED-2021-OPE-0077-0001: Hearing: Negotiated Rulemaking Committee

Dear Secretary Cardona:

The undersigned co-chairs of the Consortium for Citizens with Disabilities (CCD) Financial Security and Poverty Task Force and Social Security Task Force write to thank you for beginning negotiated rulemaking committees on discharges for borrowers with a total and permanent disability under 34 CFR 674.61, 682.402, and 685.213. As we highlighted in our prior letter,¹ we believe that the current regulations do not meet the needs of people with disabilities and we are glad the Department is taking the opportunity to fix total and permanent disability (TPD) student loan discharge process for disabled borrowers. In order to ensure that the new regulations address the needs of our communities, we have three recommendations for the Department.

First, we believe that many of the issues with the current regulations are because there was not a representative from the disability community on the previous negotiation panel. We hope the Department will ensure comprehensive representation this time. Specifically, we believe that it is absolutely crucial to have a disability advocate with expertise in Social Security, Supplemental Security Income, and the TPD program because these programs are complex and the negotiations must be informed by someone who understands these complexities and potential interactions. Given their expertise in these issues, we believe that Bethany Lilly or John Whitelaw would be appropriate negotiators.² We are also particularly glad that the Department is required to have a legal services negotiator because we work very closely with those advocates and think that expertise is also crucial; legal services organizations are often the only source of help with TPD applications for people with disabilities.

Second, while we are grateful that the current emergency protections are preventing Social Security disability beneficiaries from having their benefits offset (a concern we raised in our prior letter), we are extremely concerned about what will happen when these protections expire. It is not possible to live on \$750 a month in this country and we would urge the department to use any authority they have to prevent offsets from being reinstated for TPD eligible disability beneficiaries. It is completely unacceptable for beneficiaries who are eligible for relief to have the benefits they have paid into garnished because they cannot navigate an unnecessarily complex bureaucratic process.

Finally, as detailed in our prior letter, we have several substantive recommendations about how to best reform the program. Specifically, we believe that the Department should make three major reforms to the TPD program: eligibility for TPD should be revised to reflect the statute and Congressional intent, the program should be automated and simplified as possible, and the monitoring period should be eliminated.

The current eligibility, based on the Social Security Administration medical diary categories, does not reflect the statute or Congressional intent. The statute has always been clear that so long as someone meets the Social Security disability standard for five years, they are eligible for TPD discharge. Using the diary categories, which SSA uses to determine when to review a case file is a very limited proxy for determining those who have been or would be eligible for five years. We would instead recommend that the Department expand the proxies they use to also include: people who have an onset of disability date at least five years ago, beneficiaries on the compassionate allowance list, all beneficiaries currently receiving retirement benefits who were receiving disability benefits when they transitioned to retirement benefits, older disability beneficiaries who will not have their disability status reviewed again, and certain working beneficiaries, in addition to the existing diary category eligibility.³

The Department has already automated disability discharge for Veterans and we believe the same should happen for Social Security beneficiaries (who we will note include many Veterans who do not have service connected disabilities). SSA and ED have strong data sharing arrangements and a simple opt out notice, detailing the fact that additional loans cannot be taken out and other relevant information, can be sent to all eligible beneficiaries. We believe that the monitoring period should be eliminated, but if it is not, ED and SSA can continue to data share--we do not believe there is any data required for ED's monitoring that is not information already collected by SSA as part of administering disability benefits. Thus any individual who remains on disability benefits can be assumed to be complying with the terms of the discharge.

Third, the monitoring period. The monitoring period is not required by statute. We believe that it is unnecessary and simply results in people with disabilities having their loans unnecessarily reinstated. Research by both Governmental Accountability Office⁴ and National Public Radio⁵ confirms that far too many people with disabilities have their loans reinstated because of unclear requirements. We urge the Department to eliminate the monitoring period entirely. If the Department does believe that such a period is required for certain beneficiaries, such as those who have not been on disability benefits for 5 years, we would urge the use of inter-agency data-sharing to verify eligibility status rather than placing the burden on beneficiaries.

Thank you for the opportunity to comment, we look forward to working closely with the Department as this process moves forward. We are including with our comments copies of a white paper and our previous letter with more detailed recommendations we endorse for the Department's reference.

Sincerely,

Financial Security and Poverty Task Force

Cyrus Huncharek, National Disability Rights Network

Bethany Lilly, The Arc of the United States

Social Security Task Force

Stacy Cloyd, National Organization of Social Security Claimants' Representatives

Tracey Gronniger, Justice in Aging
Bethany Lilly, The Arc of the United States
Jeanne Morin, National Association of Disability Representatives

¹ CONSORTIUM FOR CITIZENS WITH DISABILITIES, LETTER ON TPD PROGRAM (April 5, 2021), http://c-c-d.org/fichiers/Final_TPD_Letter_4-5-21.pdf.

² DELIVERING ON DEBT RELIEF, JOHN WHITELAW AND BETHANY LILLY, RELIEF FOR BORROWERS WITH DISABILITIES (2020), <https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf#page=94>.

³ *Id.*

⁴ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, SOCIAL SECURITY OFFSETS: IMPROVEMENTS TO PROGRAM DESIGN COULD BETTER ASSIST OLDER STUDENT LOAN BORROWERS WITH OBTAINING PERMITTED RELIEF (Dec. 2016), <https://www.gao.gov/assets/gao-17-45.pdf>.

⁵ National Public Radio, *Student Loan Borrowers with Disabilities Aren't Getting Help They Were Promised* (Dec. 4, 2019), <https://www.npr.org/2019/12/04/776058798/why-student-loan-borrowers-with-disabilities-arent-getting-the-help-they-deserve>.