



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION**

**Issue Paper #1: Total and Permanent Disability
Session 1: October 4-8, 2021**

Issue: Improving the Process for Granting Total and Permanent Disability (TPD) Discharges

Statutory cites: §437(a) of the Higher Education Act of 1965, as amended

Regulatory cites: 34 CFR 685.213

Summary of issues: Sections 437(a)(1) and (a)(2) of the Higher Education Act of 1965, as amended, provide for a total and permanent disability (TPD) discharge of Federal student loans for borrowers who are totally and permanently disabled. A total and permanent disability is defined in the statute as a medically determinable physical or mental impairment that prevents an individual from engaging in substantial gainful activity and that can be expected to result in death; has lasted for a continuous period of at least five years; or can be expected to last for a continuous period of at least five years. In addition, a borrower who has been determined by the Department of Veterans Affairs (VA) to be unemployable due to a service-connected disability qualifies for a TPD discharge.

Under current regulations, a borrower may receive a TPD discharge based on a disability determination by the Social Security Administration (SSA) or VA or based on a physician's certification of TPD. Borrowers who receive TPD discharges based on SSA documentation or a physician's certification are subject to a three-year post-discharge monitoring period. If a borrower fails to meet certain requirements during the three-year monitoring period, the discharged loan may be reinstated. The Department announced in March 2021 that it would be relaxing the monitoring period requirements during the national emergency and reinstating discharges for any borrower who had not responded to a request for earnings information.

The Department has identified several aspects of the TPD discharge process that could be improved through regulation:

- The three-year post discharge income monitoring period and its documentation requirements are burdensome for affected borrowers. Since 2013, loans for more than half of the one million borrowers who received a TPD discharge were reinstated because the borrower did not respond to requests for income documentation, although an analysis conducted by the Department with Internal Revenue Service (IRS) data suggests that 92 percent of these borrowers did not exceed the earnings threshold and that these results are similar for borrowers whose discharge is based on the SSA or physician's certification process.
- Borrowers who currently qualify for TPD discharges based on SSA disability determinations must be in SSA's Medical Improvement Not Expected (MINE) category to qualify, although there are other SSA disability categories that may support a discharge.

Total and Permanent Disability 2

- For borrowers applying for a TPD discharge based on a disability determination by the SSA, acceptable documentation for the TPD discharge is limited to the notice of award that the borrower receives from the SSA.
- For borrowers applying for a TPD discharge based on a physician's certification, only a doctor of medicine or a doctor of osteopathy may certify the TPD discharge form.
- The Department has limited ability to ensure the validity of physician's certifications on TPD discharge forms.

Solutions: The Department proposes the following solutions to the issues identified above for discussion with the negotiating committee:

Eliminate the three-year post discharge monitoring period. During the three-year post-discharge monitoring period, borrowers must furnish income information annually. Borrowers who do not respond to these requests for earnings information have their loans reinstated. This is an outcome that can undo years of hard work to obtain the proper approvals to receive the discharge. The vast majority of these reinstatements are occurring for borrowers who are low income. This places them at significant risk of going delinquent, defaulting, and facing the loss of Social Security benefits on debts that should have stayed discharged were it not for the paperwork burden. It is far more common for reinstatements to occur solely because a borrower did not respond to paperwork, not because the borrower earned more than the amount allowed under the regulations. Borrowers who receive TPD discharges based on disability determinations by VA are not subject to a post-discharge monitoring period.

Eliminating the income monitoring period would also create greater parity between borrowers who receive a TPD discharge based on a disability certification or an SSA determination with borrowers who receive a TPD discharge based on VA documentation and reduce the burden that disabled borrowers face in retaining their discharge.

Expand the number of SSA categories that would allow a borrower to qualify for a TPD discharge.

Allow borrowers in the following three SSA categories or situations to qualify for TPD discharges, in addition to borrowers in the MINE category:

- **Compassionate allowance**—This is a status where the borrower has one of a predefined set of serious conditions that SSA fast tracks because the condition is highly likely to qualify for a disability determination.
- **A Medical Improvement Possible (MIP) status that has been renewed at least once**—SSA does not make distinctions among the severity of an individual's disability. Rather, it focuses on how long it expects that disability to persist. MINE, which is the only status the Department currently recognizes, requires an individual to be reviewed every five to seven years. MIP requires disability reviews within three years. A borrower who was approved for disability benefits in the MIP category once, and whose approval in the MIP category was subsequently renewed, will be in a disability status for at least six years. This is sufficient to meet the statutory definition of a condition that has lasted or is expected to last for at least five years.
- **Previously in a MINE status but aged into the retirement file**—Once a borrower in the MINE or MIP status hits retirement age they often move into SSA's retirement file and no longer show up

Total and Permanent Disability 3

as eligible for disability benefits. The Department would allow borrowers receiving SSA retirement benefits with a disability determination date at least five years in the past to qualify for a TPD discharge. (**Note:** The process of finding these individuals through our match with SSA will be different than our current SSA Match process. While SSA can report the date of disability determination, it cannot report who in the retirement file had a prior MINE status. That means the Department will not be able to identify borrowers who had a MINE status but entered the retirement file prior to any of the matches conducted with SSA.)

Expand allowable SSA documentation. Amend regulations to reflect the current practice of allowing borrowers to submit a Benefit Planning Query (BPQY), which is another form of documentation produced by SSA that contains similar information to the notice of award and is easier to obtain.

Accept TPD certifications from certain health care professionals who are not physicians. Expand the list of eligible signers to include nurse practitioners and physician's assistants who are licensed to practice in the United States. (**Note:** The Department has identified an authoritative source for verifying licensure of nurse practitioners. However, we have not identified a source that would allow us to verify licensure status of physician's assistants. We would be interested in suggestions from negotiators of whether there is a similar database for physician's assistants so that we could include them.)

Provide greater protection around the physician's certification of the TPD discharge form. Add regulatory language stating that the Department will analyze physician's certification forms to verify any patterns that suggest potential cause for concern. This could include large numbers of forms from a single individual. The Department would have the ability to refer concerning practices to the Office of Inspector General and to decline to accept physician's certifications from that individual.

Proposed Regulations:

To assist the Committee in discussing these issues, the Department is providing draft revisions to the TPD regulatory language for the Direct Loan Program, incorporating the Department's proposals.

§685.213 Total and permanent disability discharge.

(a) *General.* (1) A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in §685.102(b), and satisfies the eligibility requirements in this section.

(2) For a borrower who becomes totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b), the borrower's loan discharge application is processed in accordance with paragraph (b) of this section.

(3) For veterans who are totally and permanently disabled as described in paragraph (2) of the definition of that term in §685.102(b), the veteran's loan discharge application is processed in accordance with paragraph (c) of this section.

(4) For purposes of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a "borrower" or a "veteran" include, if applicable, the borrower's

Total and Permanent Disability 4

representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(b) *Discharge application process for a borrower who is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b)—(1) Borrower application for discharge.* Except as provided in paragraph (d)(2) of this section, 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. If the borrower notifies the Secretary that the borrower claims to be totally and permanent disabled prior to submitting a total and permanent disability discharge application, the Secretary—

(i) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(ii) Suspends collection activity on any of the borrower's title IV loans held by the Secretary, and notifies the borrower's other title IV loan holders to suspend collection activity on the borrower's title IV loans for a period not to exceed 120 days; and

(iii) Informs the borrower that the suspension of collection activity will end after 120 days and collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(2) ~~Physician eDisability certification or Social Security Administration (SSA) disability determination notice of award.~~ The application must contain—

(i) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b); ~~or~~

(ii) A certification by a nurse practitioner or physician's assistant licensed by a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b);

(iii) An SSA Benefit Planning Query (BPOQ) or an SSA notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that ---

(A) The borrower qualifies for SSDI or SSI benefits and the borrower's next scheduled disability review will be within five to seven years;

(B) The borrower qualifies for SSDI or SSI benefits and the next scheduled disability review will be within three years, and that the borrower's eligibility for disability benefits in the three-year review category has been renewed at least once; or

(C) The borrower qualifies for SSA compassionate allowance payments,

(iv) For borrower's currently receiving SSA retirement benefits, documentation that prior to the borrower qualifying for SSA retirement benefits the borrower qualified for SSDI or SSI benefits with a disability review period of within five to seven years.

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the ~~physician's certification or the SSA documentation described in §685.213(b)(2) notice of award for SSDI or SSI benefits~~ supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in §685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, nurse practitioner, or physician's assistant certified the borrower's application; or

(B) As of the date the Secretary received the SSA ~~documentationata described in notice of award for SSDI or SSI benefits.~~ §685.213(b)(2)(iii) or (iv).

(ii) The Secretary will analyze certification from physicians, nurse practitioners, or physician assistants that suggest patterns of concern, such as large numbers of TPD applications certified by an individual, and may decline to accept the certifications at the Secretary's discretion.

(iii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in §685.102(b). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

Total and Permanent Disability 6

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician, nurse practitioner, or physician's assistant certified the borrower's loan discharge application or the date the Secretary received the SSA documentationata described in §685.213(b)(2)(iii) or (iv).~~notice of award for SSDI or SSI benefits~~. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the physician's, nurse practitioner, or physician's assistant certification or the SSA documentationata described in §685.213(b)(2)(iii) or (iv).~~notice of award for SSDI or SSI benefits~~ provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in §685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the physician, nurse practitioner, or physician's assistant certification or the date the Secretary received the SSA documentationata described in §685.213(b)(2)(iii) or (iv). SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, or physician's assistant certified the borrower's discharge application or before the date the Secretary received the SSA documentationata described in §685.213(b)(2)(iii) or

Total and Permanent Disability 7

~~(iv). notice of award for SSDI or SSI benefits~~ and a disbursement of that loan or grant is made during the period from the date of the physician's, nurse practitioner, or physician's assistant certification or the receipt of the SSA documentationata described in §685.213(b)(2)(iii) or (iv). notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) ~~Receipt of new title IV loans or TEACH Grants after the date of the physician's, nurse practitioner, or physician's assistant certification, or after the date the Secretary received the SSA documentationata described in §685.213(b)(2)(iii) or (iv). notice of award for SSDI or SSI benefits.~~ If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, or physician's assistant certified the borrower's discharge application or on or after the date the Secretary received the SSA documentationata described in §685.213(b)(2)(iii) or (iv). notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

~~(7) Conditions for reinstatement of a loan after a total and permanent disability discharge. (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within three years after the date the Secretary granted the discharge, the borrower—~~

~~(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);~~

~~(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;~~

~~(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or~~

~~(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five to seven year period indicated in the SSA notice of award for SSDI or SSI benefits.~~

~~(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—~~

~~(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;~~

~~(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and~~

~~(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.~~

Total and Permanent Disability 8

~~(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—(A) The reason or reasons for the reinstatement;~~

~~(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and~~

~~(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.~~

~~(8) Borrower's responsibilities after a total and permanent disability discharge. During the three-year period described in paragraph (b)(7)(i) of this section, the borrower must—~~

~~(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;~~

~~(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(7)(i)(A) of this section;~~

~~(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form provided by the Secretary; and~~

~~(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.~~