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Secretary Miguel Cardona  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202  
Submitted via regulations.gov

**RE: Comments in Response to the U.S. Department of Education’s Proposed Total and Permanent Disability Discharge Application Form (Docket ID ED–2023–SCC–0120)**

Dear Secretary Cardona,

On behalf of our low-income clients, the National Consumer Law Center submits these comments in response to the U.S. Department of Education’s request for feedback on the proposed application form for the Total and Permanent Disability (TPD) Program. Our comments reflect our experience working directly with low-income borrowers applying for TPD discharge and other federal student loan discharges, as well as feedback from other legal aid attorneys who provide TPD discharge assistance. All of our comments are intended to help ensure that the TPD application form is clear, accessible, and reflects the language and spirit of the TPD program.

The TPD program is vital for the economic security of borrowers. People with disabilities are twice as likely to live in poverty than people without disabilities.<sup>1</sup> Until recently, many eligible disabled borrowers were not able to obtain a TPD discharge due to administrative hurdles, complicated regulatory requirements, and an overly burdensome application process. We applaud the new TPD rules, which expand the categories of disabled borrowers that will be eligible for relief under the program, eliminate the unnecessary post-discharge monitoring period, and allow more types of medical professionals to certify borrower’s disability.

But to fulfill the potential benefits of the new TPD rules, the TPD application form should be revised to correspondingly reduce application barriers and improve access to critical borrower protections. The recommendations we put forth, if implemented, will make the form

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<sup>1</sup> Nat’l Council on Disability, [National Disability Policy: A Progress Report](https://www.ncd.gov/publications/national-disability-policy-a-progress-report), (Oct. 2017), available at [www.ncd.gov](https://www.ncd.gov)

more accessible, and less burdensome for disabled borrowers, their representatives, and the medical professionals required to certify a borrower's disability.

**A. To simplify the TPD application, the Department should consider creating separate application forms tailored to the three bases for obtaining a TPD discharge.**

The current TPD application form is a one-size-fits-all document that combines the various requirements and information about the three separate bases for TPD eligibility. As a result, the instructions on the form are long and confusing, and not tailored to the specific basis for which the borrower is seeking a TPD discharge. To simplify the TPD application process, the Department should consider creating three separate TPD applications that are tailored to the basis for which the borrower is applying for TPD discharge. For online applications, separating the forms may not be as important, because the use of skip-logic hides much of the irrelevant information from an online applicant. But for paper/PDF applications, combining too much irrelevant information in a single form can make an application harder to navigate. The forms could be titled as follows or a variation of:

1. Discharge Application: TPD (Veterans Disability Determination),
2. Discharge Application: TPD (Social Security Administration Disability Determination), and
3. Discharge Application: TPD (Medical Certification).

Separating the forms now would be appropriate, considering the expansion of categories for which a borrower can qualify for TPD based on SSA documentation. For example, before the new rules were implemented, only disabled borrowers in the MINE category with medical review in 5 to 7 years could qualify for TPD based on SSA documentation. Now, in addition to the MINE category, there are four new bases for which a borrower could qualify for a TPD discharge through SSA documentation, including: (1) being in the medical improvement possible (MIP) category with the next disability review scheduled at 3 years; (2) having an established disability onset date at least five years prior to applying for a TPD discharge or has been receiving SSDI or SSI benefits for at least five years prior to applying for TPD; (3) being on SSA compassionate allowance list; and (4) receiving SSA retirement benefits after having met the other SSA qualification for TPD before qualifying for SSA retirement benefits.<sup>2</sup>

The new SSA categories, when read together with the other information and requirements on the TPD form, make the form more complex and difficult to understand. While expanding the number of categories of borrowers eligible for discharge in this way is an important improvement, the added complexity could make the form difficult for unrepresented borrowers to navigate. A potential way to address this is to create a separate stand-alone application that explains in plain language the requirements for qualifying for TPD based on SSA documentation and walks borrowers through how they can obtain and submit the necessary SSA documentation.

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<sup>2</sup> 34 C.F.R. § 685.213(b)(2)

Separating the form could also make the TPD application process less burdensome for veterans who are not subject to additional documentation, monitoring period, or reinstatement requirements. Therefore, a stand-alone VA application would eliminate the discussion of these requirements, making the TPD form short and simple for eligible veterans.

Similarly, the medical professional certification form in Section 4 of the application only applies to borrowers seeking TPD based on medical certification. Creating a separate application form for borrowers seeking TPD through the medical certification route would allow the Department to thoroughly explain the medical certification process to borrowers and provide easy-to-understand instruction to the medical professionals who are expected to certify a borrower's disability, while sparing borrowers applying based on VA or SSA status from interacting with Section 4.

Additionally, having separate application forms could make the backend processing of the TPD application easier for the TPD servicer. A servicer would not have to read the form to determine under which of the three categories a borrower is applying for a TPD discharge, because such information would be instantly apparent based on the TPD discharge form the borrower submits.

One potential downside to separating out the TPD application forms is that some borrowers may not find or complete the right form or may not realize that they can qualify for relief through a different pathway. For that reason, if the Department adopts separate forms, we encourage inclusion of clear, bold information on the form alerting borrowers to the existence of the alternative forms and pathways to relief. Additionally, as noted above, separate forms may not be necessary for borrowers who apply online if the Department is able to take advantage of skip logic to hide most irrelevant information from applicants.

**B. The Department should revise the medical professional certification form to remove questions regarding the disclosure of the borrower's medical diagnosis and disabling condition because disclosure of such information is not required under the TPD regulations.**

The medical professional certification pathway to discharge is critical to ensure access to TPD discharge for eligible borrowers who may struggle to access VA or SSA documentation or may fall through the cracks of those programs. Therefore, the form should be drafted with the goal of making it more likely that a medical professional will certify an eligible borrower's disability. The form shouldn't require unnecessary personal health information that will cause busy medical professionals to overanalyze the form, take longer to complete it, or decline to complete it altogether. Additionally, as a matter of borrower health privacy, borrowers should not be required to disclose any more of their health information than is necessary to assess their eligibility for discharge under the TPD laws and regulations.

The TPD regulations only require eligible medical professionals to certify that the borrower is unable to engage in any substantially gainful employment activity by reasons of any medically determinable physical or mental impairment that (1) can be expected to result in death;

(2) has lasted for a continuous period of not less than 60 months; or (3) can be expected to last for a continuous period of 60 months.<sup>3</sup>

The questions on the certification form requiring medical professionals to disclose private health information related to the borrower's medical diagnosis and disabling condition, questions 5-11, go beyond these required certifications and are unnecessary for purposes of evaluating a borrower's eligibility for TPD. This is evident in that borrowers applying for discharge through VA or SSA documentation do not have to provide documents explaining their medical diagnosis and disabling condition.<sup>4</sup> VA borrowers are only required to provide documents showing they have a service-connected disability that renders them unemployable.<sup>5</sup> In fact, the regulations explicitly prohibit the Department from requesting additional documentation about the veteran's disability.<sup>6</sup> Likewise, Social Security's BPQY, which is presumptive evidence of TPD eligibility when a borrower's next medical review is in 3-plus years, only discloses information about the borrower's disability cash payment, health insurance, scheduled medical review, and work history.<sup>7</sup> The form does not provide information about a borrower's medical diagnoses, or their disabling condition. Therefore, requiring TPD borrowers seeking discharge through medical certification to provide private health information about their medical diagnosis and disabling condition treats them differently than the other eligible TPD borrowers.

The regulations do not require medical professionals to provide extensive private medical information detailing the nature of their client's disability. Their certification as licensed medical professionals that the borrower meets the regulation's definition of totally and permanently disabled, as outlined in questions 1 to 4 of the certification form, is all that is required to qualify a borrower for a TPD discharge. Medical professionals are already subject to extensive licensing and ethical standards that provide robust confidence that they will not lie on patients' forms, and the further risk of criminal prosecution and loss of state license for falsifying TPD forms is a sufficient deterrent against abuse of the TPD program.

Additionally, the Department's TPD servicer, who most likely does not have medical professionals on staff, is not qualified to evaluate a medical professional's assessment of a borrower's disabling condition even when that information is provided. Therefore, the questions on the medical certification form requiring discussion of the borrower's diagnosis and disabling condition is an unnecessary hurdle that should be removed from the medical professional certification form.

**C. The Department should revise the medical certification form to include instructions for medical professionals and allow them to send the completed form directly to the TPD servicer via fax or other secured electronic delivery.**

Currently, section 4 of the TPD application, which contains the medical professional certification form, does not provide instructions to medical professionals on the TPD program and how to complete the form. In our experience, disabled borrowers often have difficulty

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<sup>3</sup> 34 C.F.R. § 685.102(b)

<sup>4</sup> 34 C.F.R. § 685.213(c)

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Social Security Administration, [Benefits Planning Query Handbook \(2021-2023\)](http://www.ssa.gov/), available at <http://www.ssa.gov/>

getting busy medical professionals who are unfamiliar with the TPD form to complete and certify the form. In most cases, this is because the medical professional does not understand the purpose of the form or what is needed from them, or the borrower is not able to explain the form to the medical professional due to limitations imposed by their disability. In one case, a physician refused to sign the form because he did not believe anyone should have their loan canceled.

Even in cases where the borrower is represented by an attorney, it is still difficult to get the medical professional to complete the certification form. In some cases, borrowers' advocates had to write a letter explaining the purpose of the form to the physicians along with specific instructions on how to complete the form. As most borrowers are not represented by attorneys, they rely on the Department's forms and instructions to explain the TPD form to their doctors or other qualified medical professionals.

A TPD certification form with concise but clear information about the TPD program and instructions on how medical professionals should complete the form would make the process less burdensome for borrowers, their advocates, and medical professionals. Additionally, a certification form with such information and instructions would likely resolve any suspicion or reservations the medical professional may have about completing the form.

Additionally, the Department should allow medical professionals to submit the form directly to the TPD servicer via fax or other secured electronic communication. Often after a borrower submits the certification form to the medical professional, it takes a couple of days or weeks for the professional to sign it. Unless the office agrees to mail the form to the borrower (causing further delay), the borrower, who may have transportation limitations, then has to go through the burden of making another trip to the doctor to get the form. It would be faster and less burdensome on disabled borrowers if the medical professionals could send the completed certification form directly to the TPD servicer.

#### **D. The Department should clarify that TPD applicants can engage in minimal employment activity and still qualify for a discharge.**

The TPD form defines substantially gainful employment activity as a level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both. However, this definition is confusing and does not explain clearly what constitutes substantially gainful employment activity or how a medical professional can evaluate whether work performed by a TPD applicant is substantially gainful for purposes of certifying a disability. As a result, medical professionals may assume that this standard means that a borrower must not be able to engage in any gainful employment at all to be considered totally and permanently disabled, which is not the case.

The Department has stated that a TPD applicant can engage in minimal employment and still qualify for a discharge, provided that they are not earning income above the Health and Human Services poverty guideline for a family of two, which is \$18,310 in 2023.<sup>8</sup> However, this information is not included anywhere on the TPD form or on the medical certification form. The

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<sup>8</sup> U.S. Dep't of Educ., Fed. Student Aid, [Loan Servicing and Collection—Frequently Asked Questions](https://fsapartners.ed.gov) at TPD-Q5, available at <https://fsapartners.ed.gov>; U.S. Dep't of Health and Human Services, [Federal Poverty Guidelines for 2023](http://www.hhs.gov), (effective. Jan. 2023), available at [www.hhs.gov](http://www.hhs.gov).

Department should amend the TPD application form to clarify that a TPD applicant can engage in employment at that level and still meet the program definition of totally and permanently disabled.

**E. The Department should remove the “monitor your status” language from the TPD form to ensure that it is not interpreted to mean the Department will monitor the disability status of a borrower after a discharge is granted.**

We are thankful that the new rules eliminated the income-monitoring period. As a result, disabled borrowers will get the full benefit of the TPD program, without the hassle of ongoing paperwork or risk of reinstatement due to paperwork problems. The current form rightfully removed the income monitoring period language, but as written, the form discussion of the post-discharge monitoring period for obtaining additional financial aid is confusing and could be mistakenly read by advocates familiar with the old monitoring process as meaning the Department will continue to monitor an individual’s income and disability status. The monitoring period language in the form states as follows:

If you are granted a discharge, we will **monitor your status** during the 3-year post-discharge monitoring period that begins on the date the discharge is granted. Your discharged loans or TEACH Grant service obligation may be reinstated if you receive a new Direct Loan or TEACH Grant during this monitoring period, as explained in Section 6 of this form.”

The first sentence does not say what status the Department will monitor during the three-year monitoring period. In the disability community, “your status” can easily be interpreted to mean an individual’s disability status. Therefore, it is worth clarifying that the Department will monitor an individual's application for financial aid during the three-year monitoring period. To resolve any potential confusion or ambiguity, the Department should remove the “monitor your status” language from the entire TPD application form and consider replacing the monitoring period language with the following:

After you are granted a discharge, we will monitor whether you take on new federal student aid during the three-year post-discharge period that begins on the date the discharge is granted. Your discharged loans or TEACH Grant may be reinstated if you take on a new Direct Loan or Teach grant within the three-year period.

**F. The TPD application form should conspicuously notify disabled borrowers that they may contact the TPD servicer prior to completing the form to promptly stop all collection activity.**

The TPD regulation is clear that if the borrower notifies the Department that they are totally and permanently disabled, the Department must provide the borrower with the information needed to apply for a TPD discharge, suspend collection activity on all Department-held loans and, if applicable, notify other federal student loan holders to suspend collection activity for a period not to exceed 120.<sup>9</sup> However, most eligible disabled borrowers are not aware

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<sup>9</sup> 34 C.F.R. § 685.213(b)(1)

that they can stop collection activity immediately by calling the Department prior to submitting a TPD application. Therefore, most of them continue to experience collection activity, often experiencing unnecessary hardship as a result, as they wait to gather the necessary disability evidence for submission with their TPD application. Though some may get a refund after the discharge is approved, for many, it is often not timely to prevent economic harm such as eviction, utility cutoff, or vehicle repossession.

Though the TPD form notes that borrowers can contact the servicer if they need help, it does not state that they can call right away to stop all collection activity as they complete the TPD application and gather the necessary documents. We recommend the Department place a conspicuous text box at the top of the first page of the form instructing applicants to call the TPD servicer to notify them of their intent to apply for discharge and request all collections be stopped as they prepare their application. Additionally, we recommend the department move the box about where to send the TPD form to the top of the first page so that borrowers and their advocates can know immediately where to send the TPD form or supporting documents.

**G. The Department should enlist the assistance of plain language experts to ensure that the language of the TPD form meets applicable readability and accessibility standards.**

While we are encouraged by some of the choices made by the Department to help make the TPD process easier for borrowers, there is still room for improvement of the form, particularly related to the readability and accessibility of the form itself. Many TPD applicants have physical and mental limitations that will make it difficult for them to understand and complete the form as is. We recommend that the Department work with plain language experts to redesign the form and engage in user-testing to ensure that the public will be able to easily understand and use it.

Under the Plain Writing Act of 2010, the Department of Education is required to write “clear Government communication that the public can understand and use.”<sup>10</sup> This requirement applies to any communication that is necessary for obtaining any federal government benefit or service; provides information about any federal government benefit or service; or explains to the public how to comply with a requirement that the federal government administers or enforces. Unfortunately, the new application form falls short of being clear and easy-to-use by the public, particularly when taking into account that this form is directed at applicants who are more likely to have disabling conditions that may limit their ability to understand or complete the form.

The first rule of the Federal Plain Language Guidelines is “Think about your audience.”<sup>11</sup> In the past, the Department has seemingly assumed that the audience for these types of discharge forms is composed of college-educated individuals who have some familiarity with legal terms. However, the population that may submit a TPD form is extremely varied. It includes Parent PLUS borrowers who may not have attended college at all, individuals without a GED or high school diploma who borrowed federal aid,<sup>12</sup> individuals who began but did not complete a

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<sup>10</sup> [Pub. L. No. 111-274 \(2010\)](http://www.govinfo.gov), available at [www.govinfo.gov](http://www.govinfo.gov)

<sup>11</sup> [Federal Plain Language Guidelines](http://www.plainlanguage.gov/), (May 2011), available at <http://www.plainlanguage.gov/>

<sup>12</sup> 20 U.S.C. § 1091(d) (Jan. 1, 1986 until July 1, 2012); 34 C.F.R. §§ 682.402(e), 682.402(e)(13)(iv) (FFEL), 685.215(a)(1)(i) (Direct Loan) (citing student eligibility regulations at 34 C.F.R. § 668.32(e)(1) and ATB test requirements at 34 C.F.R. §§ 668.141–668.156).

postsecondary education program, and people who attended a certificate trade program. Additionally, borrowers completing this form are likely all experiencing disabilities that prevent them from being able to engage in substantial work; these same conditions may also impact their ability to understand and complete a complicated form such as the TPD form. Scrutinizing the form with the federal government's plain language guidelines<sup>13</sup> would assist all applicants and help borrowers with disabling conditions access the discharges they are entitled to under the law.

As the Department revises the form, it should solicit review and user testing from plain language experts to make sure the design of the form is accessible for all borrowers. The Department should, at a minimum, submit the form to its own Plain Language Department.<sup>14</sup> The proposed form does not meet plain language standards around wording use, syntax, and organization of the content. The form also includes large blocks of text in small fonts that are overwhelming and will be difficult for most borrowers to digest. These issues will be further compounded for borrowers struggling with physical or mental conditions that limit their ability to read and write. Importantly, writing in plain language is not just about text and content; it also involves design. We recommend that the Department user-test the presentation of some of the information in the introduction in information graphic format instead of blocks of text to see if it makes it easier for borrowers to digest the information presented. Further, the overall design of the form should be visually improved to make it easier for borrowers to understand and complete.

Redesigning the proposed TPD form with plain language standards in mind will help borrowers with disabilities complete and submit successful applications, ensuring that the TPD program is accessible to those who need the relief the most.

### **Conclusion and contact information**

Thank you for the opportunity to comment on the proposed TPD form. We would welcome the opportunity to meet with the Department to discuss ways to make this form more accessible and less burdensome to the borrowers we serve. Please contact Alpha Taylor [ataylor@nclc.org](mailto:ataylor@nclc.org) and Anna Anderson, [aanderson@nclc.org](mailto:aanderson@nclc.org) with questions or if you would like to discuss further.

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<sup>13</sup> [Federal Plain Language Guidelines](http://www.plainlanguage.gov), (May 2011), available at [www.plainlanguage.gov](http://www.plainlanguage.gov)

<sup>14</sup> See U.S. Dep't of Educ., [Plain Writing Initiative](http://www.ed.gov), (last visited Sept. 5, 2023), available at [www.ed.gov](http://www.ed.gov)