

December 16, 2021

VIA EMAIL ONLY

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: False Information Regarding Taxability on the Department's Total and Permanent Disability Discharge Application Form

Dear Mr. Cordray,

First and foremost, thank you for your September 13, 2021 letter responding to our April 19, 2021 Section 553(e) Petition to Provide Automatic Total and Permanent Disability (“TPD”) Discharges (the “Petition”). We appreciate not only the recent steps taken by the Department administratively, but also the consensus changes coming out of the recent Negotiated Rulemaking which will inform a forthcoming Notice of Proposed Rulemaking on TPD Discharges.

We write today to highlight a lingering but important issue identified in the Petition. Specifically, in paragraphs 34 and 58-59, we raised that the Department's TPD Application and other similar documents available on the Department's website contain false and misleading information about the taxability of TPD discharges.¹ As we explained back in April: “[a]lthough TPD discharges have not been considered taxable income by the IRS since January 1, 2018, the front of the TPD application still provides the following, false warning:

¹ In the Tax Cuts and Jobs Act of 2017, Congress eliminated federal income tax consequences for disability discharges received from January 1, 2018 through December 31, 2025. *See* Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017). In February 2018, a bipartisan group of United States Senators and Representatives wrote to the Department and specifically referenced the fact that Congress “removed the potential tax consequences associated with [TPD] loan forgiveness.” Letter from Sens. Rob Portman (R-OH), Chris Coons (D-DE), Angus King (I-ME), Susan Collins (R-ME), Tammy Duckworth (D-IL), and Cory Gardner (R-CO) & U.S. Reps. Ron Kind (D-WI) and Peter Roskam (R-IL) to the Hon. Betsy DeVos, Sec’y of Educ., the Hon. David Shulkin, Sec’y of Veterans Affs. and Ms. Nancy A. Berryhill, Acting Comm’r of Soc. Sec. (Feb. 15, 2018), *available at*: <https://www.portman.senate.gov/newsroom/press-releases/new-tax-law-place-sens-portman-coons-king-urge-trump-administration>. And, to the extent there is any doubt about the tax consequences of TPD discharges, on March 11, 2021, President Biden signed the American Rescue Plan into law. Section 9675 of that legislation provides that *all* federal student loan cancellations are excluded from “gross income” through the end of 2025.

Important Tax Information

Loan amounts discharged due to total and permanent disability may be considered taxable income by the Internal Revenue Service (IRS). Contact the IRS for more information.”²

We also noted that when the Department notifies individuals of eligibility for TPD discharge because of an SSA determination, its template letter contains the following false statement:

Important Information about TPD Discharge:

Tax Implications if Your Loans Are Discharged:

Loan balances that are discharged are generally considered income for federal tax purposes and possibly for state tax purposes. This income can result in income tax liability, but exceptions are available in some circumstances. You may want to review IRS Publication 4681 (available at <https://www.irs.gov/pub/irs-pdf/p4681.pdf>) or consult with a tax professional to determine how this affects your personal taxes.

To help you file your tax return correctly, we will send you an IRS Form 1099-C showing the total amount of your discharged debt, if your discharged debt is \$600 or more. We will also send this information to the IRS.³

In August 2021, Student Defense again flagged the erroneous taxability language in a telephone call with the Office of the General Counsel (“OGC”). After our phone call, we also followed up by email to OGC. Unfortunately, however, over eight months after we raised this issue (and nearly four years after TPD discharges became non-taxable), the Department still misinforms borrowers that the discharge may be considered taxable income.

² See Petition ¶ 58; see also U.S. Dep’t of Educ., Total and Permanent Disability Discharge Forms, available at: <https://disabilitydischarge.com/Forms> (last visited Dec. 16, 2021) (click on the link titled “Discharge Application: TPD (PDF)”; U.S. Dep’t of Educ., Discharge Application: Total and Permanent Disability at 1, available at: <https://secure.disabilitydischarge.com/Forms/PrintApplication> (last visited on Dec. 16, 2021).

³ See Petition ¶ 59; see also U.S. Dep’t of Educ., Sample SSA Match Letter, available at: <https://www2.ed.gov/documents/press-releases/04122016-sample-ssa-matchletter.pdf> (last visited Dec. 16, 2021). We do not know whether the Department currently provides IRS Form 1099-C information regarding cancellation of debt to the IRS.

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Accordingly, borrowers—particularly those who are not eligible for an automatic discharge through the SSA matching process—may be improperly discouraged from applying for a discharge due to the government providing incorrect tax information. All borrowers who receive a TPD discharge may be confused by this language; some may even go so far as to report the discharge as income on federal tax returns, subjecting them to an increased tax liability.

Earlier this week, on December 13, 2021, President Biden signed an Executive Order to “Transform [the] Federal Customer Experience and Service Delivery.”⁴ Although it does not specifically direct the Department to fix each of its forms, Section 2 of the Order provides that agencies must “systematically identify[] and resolv[e] the root causes of customer experience challenges, regardless of whether the source of such challenges is statutory, regulatory, budgetary, technological, or process-based.” This is one such challenge.

Once again, we ask that you and the Department do everything in your power to assist student loan borrowers with disabilities. Federal Student Aid must make certain that all of the information it provides on its website, its forms, and otherwise is accurate, not misleading, and up-to-date.

We look forward to your response and to working with you on this matter.

Sincerely,

/s/ Daniel A. Zibel

Daniel A. Zibel
Alexander S. Elson
National Student Legal Defense Network
dan@defendstudents.org
alex@defendstudents.org

/s/Regan Bailey

Regan Bailey
Justice in Aging
rbailey@justiceinaging.org

/s/John S. Whitelaw

John S. Whitelaw
Community Legal Aid Society, Inc.
(Delaware)
jwhitelaw@declasi.org

cc: Lisa Brown, Toby Merrill (ED OGC)

⁴ The Executive Order is available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/>.