

AGENCY BURDEN REDUCTION INITIATIVES



The (non-)Form: The Evolution of Total and Permanent Disability Debt Discharge (Department of Education)

Improving the student loan debt discharge process for totally and permanently disabled borrowers to automate eligibility determinations for most disabled borrowers.

Under the Higher Education Act, student loan borrowers who have a total and permanent disability (TPD) that “has lasted” or “can be expected to last” for a continuous period of not less than 60 months are eligible for debt discharge — that is, borrowers no longer need to repay their loans. In August 2021 and October 2022, the Department of Education (ED) issued two final regulations that are a capstone to over a decade of reforms designed to ensure that eligible disabled borrowers can receive debt relief in a minimally burdensome manner. Regulatory changes to the form for applying for debt relief have been essential to expanding access for hundreds of thousands of disabled borrowers.

Early Barriers to TPD and Improvements in Access To TPD Over Time

Early statistics associated with TPD policy suggested substantial burdens in learning about, applying for, and navigating the TPD debt discharge process:

- Data from 2007 to 2009 found that the Department received 174,718 TPD applications, but about 45,000 were rejected or remained unresolved.⁴⁴
- As recently as 2016 the government found 387,000 potentially eligible SSA disability beneficiaries who had not applied for TPD, including 179,000 who were currently in default on their loans.⁴⁵
- Since 2013, loans for more than half of the 1 million borrowers who received an initial TPD discharge were reinstated because the borrower did not respond to requests for income documentation, although an analysis conducted by the Department suggests that 92 percent of these borrowers did not exceed the earnings threshold and thus were eligible for the discharge.⁴⁶

44. Sasha Chavkin. 2011. “Education Department Bureaucracy Keeps Disabled Borrowers in Debt.” Propublica: February 13.

45. Danielle Douglas-Gabriel. 2016. “Obama to forgive the student debt of permanently disabled people.” *Washington Post*: April 12.

46. 87 FR 65904: <https://www.federalregister.gov/d/2022-23447/p-830>.

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As a result of changes to reduce burdens in the program, by 2023 the Department was able to automatically discharge the debt of more than 450,000 permanently disabled borrowers, because it no longer required applications for many individuals already found disabled by the Social Security Administration or the Department of Veterans Affairs (VA). In addition, the Department expanded the available mechanisms for demonstrating eligibility, and eliminated burdensome income monitoring requirements. As described below, these changes evolved over time as the agency identified burdens in its eligibility standards, documentation requirements, and reporting requirements that were imposing undue costs on certain applicants seeking relief and inhibiting others from accessing the policy entirely.

Moving from Undefined Eligibility Standards To Streamlined Disability Determinations

The original TPD regulations required a doctor's certification of the borrower's disability, but as the Federal Student Aid Ombudsman noted in FY 2008, "the current TPD process lacks published criteria for the conditions that meet the definition of total and permanent disability and specific guidance on medical evidence needed to document the condition. The burden of response and proof falls entirely on the applicant."⁴⁷ In the same report, the Ombudsman noted that "[i]n 38 of 106 cases, borrowers failed medical review because their physicians either did not respond to requests for additional medical information or responded with insufficient medical documentation."⁴⁸ In many cases, disabled borrowers were not informed about their doctors' non-response.

Beyond the challenges of ensuring their doctor was adequately documenting their disability, many TPD borrowers had already proven their permanent disability to the Federal government through applying for and receiving either VA or SSA disability benefits. However, the original TPD regulations expressly did not accept VA or SSA's disability determinations for the purposes of establishing total and permanent disability.

47. <https://www.documentcloud.org/documents/31739-federal-student-aid-ombudsman-fy-2008-q1-report#document/p31/a9413>.

48. <https://www.documentcloud.org/documents/31739-federal-student-aid-ombudsman-fy-2008-q1-report#document/p26/a9405>.

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Through a 2012 rulemaking, the Department began accepting an SSA disability determination as proof of a borrower's TPD, allowing these applicants to forgo seeking a separate doctor's certification if SSA had assessed they were unlikely to medically improve in the next five years. This decision built off of previous reforms that allowed for the use of VA disability determinations for disabled Veteran borrowers. However, the majority of SSA disability beneficiaries who were re-evaluated more frequently than once every five years could not use their SSA disability determination as sole proof of TPD eligibility, even if they remained eligible for SSA disability benefits for more than five years in total. In 2022 ED revisited SSA's disability recertification standards. Based on a 2020 SSA report to Congress on continuing disability review outcomes, the Department found that more than 97 percent of adult beneficiaries who were initially assigned a three-year review period were found to still be disabled even after second review, meaning they were, in total, disabled for longer than five years. Accordingly, that report found it was appropriate to grant debt discharge to disabled beneficiaries assigned a three-year disability review frequency.⁴⁹ A decade later, in 2022, the Department expanded eligibility to certain SSA disability beneficiaries.

Shifting from Duplicative Applications To Automated Applications

Under the original TPD rules, borrowers with loans from multiple lenders could not submit a single application for debt discharge to the Department of Education, but instead had to submit separate applications directly to each lender. First, in 2012 the Department eliminated this requirement and through rulemaking allowed borrowers to submit a consolidated TPD application directly to the Department. At the time, the Department estimated that half of all TPD applicants had loans with more than one loan holder and that the average applicant with multiple loan holders had five loans.

In 2016, through a joint data-matching agreement between SSA and the Department, the agency began sending notices to TPD-eligible SSA disability beneficiaries encouraging them to apply. This initiative was designed to reduce the learning costs associated with determining potential TPD eligibility, but the Department found that many eligible individuals still did not submit the necessary TPD application. Despite the effort to reduce

49. 87 FR 65904: <https://www.federalregister.gov/d/2022-23447/p-863>.

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learning costs on eligible disabled borrowers, the burdens associated with comprehending and applying for discharge were high enough that hundreds of thousands of eligible borrowers still did not apply to the program.

By 2021, the Department began using its data-matching agreement with SSA and VA to *automatically* discharge the debt of all eligible individuals found disabled by either of these agencies. Under this policy, these individuals will not face any additional paperwork requirements to demonstrate TPD eligibility. This data-matching achievement was only made possible because of the Department's work starting a decade earlier to treat VA and SSA determinations of disability as sufficient for TPD determinations.

Eliminating Unduly Burdensome Post-Award Reporting Requirements

Under TPD rules in the early 2000s, many borrowers found eligible for debt discharge were subject to a three-year income monitoring period during which their earnings could not exceed the Federal poverty level. The Department found that more than half of the one million borrowers who initially received a TPD discharge ultimately had their debt obligation reinstated because the borrower did not respond to requests for income documentation, although an analysis conducted by the Department with Internal Revenue Service data suggested that 92 percent of these borrowers did not exceed the earnings threshold.⁵⁰

The Department found this was unduly burdensome and used its statutory discretion to fully remove the income monitoring requirement, affirming that “the Department has found that the income monitoring requirement is significantly more likely to result in the reinstatement of a loan for a low-income borrower than it is to identify someone whose income suggests they are able to engage in gainful employment.”⁵¹

50. 87 FR 65904: <https://www.federalregister.gov/documents/2022/11/01/2022-23447/institutional-eligibility-under-the-higher-education-act-of-1965-as-amended-student-assistance#p-830>.

51. 87 FR 65904: <https://www.federalregister.gov/documents/2022/11/01/2022-23447/institutional-eligibility-under-the-higher-education-act-of-1965-as-amended-student-assistance#p-830>.

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Together, the Department of Education's regulatory changes reduced *learning and compliance costs* by simplifying the requirements for proving eligibility for debt discharge, including in some cases automating the process based on separate eligibility determinations, and reduced *psychological costs* by reducing the hassle and stigma of needing to prove disability status for the purposes of discharge.