taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ENERGY AND NATURAL RESOURCES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1500 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

October 7, 2016

The Honorable Jack Lew
Secretary
U.S. Department of the Treasury

The Honorable John Koskinen
Commissioner
Internal Revenue Service

Dear Secretary Lew and IRS Commissioner Koskinen:

Under federal law, Americans who are totally and permanently disabled are eligible for a discharge of their federal student loans.[1] On April 12, 2016, the Department of Education (ED) announced an innovative partnership between ED and the Social Security Administration (SSA) to expedite this process by using cross-agency data-matching to identify Social Security beneficiaries with disabilities who are eligible for Total and Permanent Disability (TPD) federal student loan discharges.[2] I applaud the Administration for taking these steps to ensure that Social Security beneficiaries with total and permanent disabilities receive the student loan debt relief that Congress has provided them under the law.

I am deeply concerned, however, that these important steps are threatened by the Treasury Department's ("Treasury") lack of action with respect to these borrowers. Despite explicit authority granted to Treasury by Congress under Internal Revenue Code ("IRC") section 108(a)(1)(B) to exclude all "income from discharge of indebtedness" for insolvent taxpayers, Treasury's companion authority to provide all needful rules and regulations to enforce the Code under IRC section 7805, Treasury's demonstrated authority to provide class-wide guidance on the insolvency exclusions in Rev. Proc. 2015-57, and the well-documented insolvency of these borrowers in Census data, Federal Reserve data, ED data and SSA data, Treasury has yet to act to provide class-wide guidance applying the insolvency exclusion to these totally and permanently disabled Social Security beneficiaries and stopping the issuance of 1099-Cs by ED.

Treasury's failure to provide guidance will impose an extraordinary compliance burden on Social Security beneficiaries with total and permanent disabilities, while also triggering unnecessary administrative burdens on both the IRS and ED. This is inexplicable, given clear evidence that these borrowers, who have an average student loan balance of $18,000,[3] are insolvent. Streamlined TPD discharges are narrowly available to impoverished borrowers who earn less than the poverty threshold for a family of two (regardless of their actual family size). In fact, borrowers will have their benefit clawed back if they earn above this level in any of the

---

[1] 34 CFR 685.213.
[2] U.S. Department of Education, "U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities" (April 12, 2016) (online at: http://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities).
[3] Data provided by the Education Department.

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

three succeeding years.[4] Although this cap is currently set at $16,020, 84% of the population identified by SSA as eligible for data-matching actually report $0 in annual earnings.[5]

Meanwhile, separate surveys by the Census Bureau and the Federal Reserve confirm that the median net worth of Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) beneficiaries – the categories of Social Security beneficiaries who receive disability-related benefits – is low: $200 and $1,500, respectively.[6] These figures almost certainly overstate the net worth of borrowers actually eligible for the streamlined TPD discharge since they refer to *all* SSDI/SSI beneficiaries, not just the subset of individuals with *permanent* disabilities who are eligible for the TPD data match process and who are significantly more financially disadvantaged (see Table 1 in Appendix 1).

The earnings of borrowers eligible for the streamlined TPD discharge is so low that the vast majority would likely not otherwise incur an obligation to file a tax return – but will be unexpectedly caught up in the IRS Automated Underreporter (AUR) examination process if ED issues 1099-Cs for these borrowers.[7] In order to avoid triggering the AUR process, which leads directly to the collection process for those individuals who do not quickly and accurately respond, each individual borrower receiving a discharge will have to complete and file complex paperwork with the IRS. Many of these borrowers with total and permanent disabilities will have difficulty completing these tax forms without paying for professional assistance. Volunteer Income Tax Assistance ("VITA") sites do not provide assistance on the insolvency exclusion for discharge of indebtedness income.

A totally and permanently disabled taxpayer's failure to comply with the newly imposed and unnecessary filing burden could result in the offset of their federal benefits, a levy on their bank accounts and other assets, the filing of a notice of federal tax lien against them, and the possible loss of eligibility for other means-tested state and federal benefit programs. Dealing with these accounts will not only unnecessarily and substantially burden the individuals the government is trying to protect but will also throw a high number of accounts into the IRS system, which may in turn require the IRS to spend substantial additional resources on taxpayers with no ultimate tax liability.

The IRS has ample authority to address this problem by issuing insolvency guidance for totally and permanently disabled Social Security beneficiaries – as it has done in the past with far less available data on the income and asset profile of affected borrowers. Given its existing statutory and administrative authority, Treasury can and should issue public guidance providing that the newly streamlined TPD discharges are excluded from gross income and do not require

---

[5] Figures provided by SSA for Social Security Disability Insurance (SSDI) beneficiaries and Supplemental Security Income (SSI) recipients with diary status of Medical Improvement Not Expected (MINE), drawn from 2014 10% Disability Analysis File (DAF) matched to 2014 Master Earnings File.

[6] Net worth figures drawn from Survey of Income and Program Participation (SIPP) collected by the Census Bureau and analyzed by the Urban Institute, and the Survey of Consumer Finances (SCF) collected by the Federal Reserve and analyzed by the Boston College Retirement Center. For an itemized list of the elements included in these calculations of net worth and how they correspond with IRS Form insolvency worksheet accompanying IRS Form 982, please see Tables 2, 3, and 4 in the appendix.

[7] https://www.irs.gov/publications/p17/ch01.html#en_US_2015_publink1000170407

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

the issuance of 1099-Cs. Failure to do so directly undermines the work of ED and SSA to streamline the TPD process, creates entirely avoidable complications for Social Security beneficiaries who are totally and permanently disabled, and imposes an extraordinary administrative burden on both the IRS and ED. I ask that you take immediate action to issue this guidance, and provide my staff with a briefing on these efforts by Monday, October 31.

Streamlined Discharge Process Meant to Deliver Student Loan Relief to Totally and Permanently Disabled Borrowers

Under federal law, Americans who are totally and permanently disabled are eligible for a discharge of their federal student loans.[8] Prior to the implementation of the streamlined discharge process announced in April 2016, borrowers seeking a discharge had to detailed supporting documentation attesting to the borrower's "totally and permanently disabled" status along with their applications for discharge.[9]

Under a new process announced in April 2016, certain totally and permanently disabled individuals eligible for a loan discharge will no longer have to supply duplicative information to ED that SSA has already acquired and verified.[10] ED and SSA will match existing datasets to proactively identify a group of borrowers eligible for TPD discharge because they: a) receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits, and b) have a designation of "Medical Improvement Not Expected" (MINE).[11] These borrowers will receive a letter explaining their eligibility for loan forgiveness and will be able to sign and return an application without needing to submit additional documentation.

I applaud ED and SSA for taking these important steps to streamline debt relief for borrowers who are totally and permanently disabled.

---

[8] 34 CFR 685.213.

[9] Veterans could submit documentation from the U.S. Department of Veterans Affairs showing a determination that the borrower was unemployable due to a service-connected disability. Borrowers receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits could submit documentation from the Social Security Administration (SSA) showing that the borrower's next scheduled disability review will occur within five to seven years. Beneficiaries with this disability review schedule are designated "Medical Improvement Not Expected" (MINE) by the SSA, meaning that the beneficiary has a permanent impairment (20 CFR 404.1590(c)). And other borrowers could submit certification of total and permanent disability from a physician. Federal Student Aid, "Application Process" (online at: https://www.disabilitydischarge.com/application-process).

[10] U.S. Department of Education, "U.S. Department of Education Acts to Protect Social Security Benefits for Borrowers with Disabilities" (April 12, 2016) (online at: http://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities).

[11] Social Security beneficiaries are assigned different designations depending on the severity of their disability, which correspond to different timelines for "continuing disability review," when ongoing assessments of eligibility of benefits are conducted. If an impairment is expected to improve (Medical Improvement Expected), beneficiaries are generally scheduled for a continuing disability review between 6-18 months after initial eligibility. If improvement for an impairment cannot be predicted but is not severe enough to be considered permanent, it is designated nonpermanent (Medical Improvement Possible) and continuing disability reviews will take place at least every three years. Individuals with permanent disabilities (Medical Improvement Not Expected) are reviewed at least every seven years. 20 CFR 404.1590.

taxanalysts® DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

The obvious goal of this streamlined discharge process is to deliver relief to borrowers with permanent disabilities. An individual with a total and permanent disability has what federal law describes as "an extremely severe condition . . . unlikely to improve so as to permit the individual to engage in substantial gainful activity."[12] Individuals with chronic and severe disabilities experience massive drops in earnings and hours worked. Ten years after the onset of a disability, the average individual with a chronic and severe disability has earnings drop by 76%, and only 35% of this group report working at all over the course of a year.[13]

These steep drops in income mean that borrowers with a total and permanent disability often struggle to make payments on student loans – frequently triggering a default. Of the 387,000 borrowers identified in ED's initial data match as eligible for a TPD loan discharge, roughly half are already in default on their federal student loans.[14]

Federal student loan defaults have serious consequences for borrowers with disabilities: SSDI benefits and federal tax refunds can be garnished by the federal government in order to collect unpaid student loans. Indeed, President Obama identified the risk that borrowers with total and permanent disabilities would have disability benefits garnished through the Treasury Offset Program as a key motivation for calling for a streamlined discharge process when he released his "Student Aid Bill of Rights" in March 2015.[15]

Thousands and thousands of individuals are at risk of default and subsequent garnishment due to permanent and total disability: ED has already identified almost 100,000 borrowers with total and permanent disabilities who have defaulted on their student loans and included in the Treasury Offset Program, which carries out the offset of federal disability benefits for borrowers in default.[16]

Borrowers Receiving Total and Permanent Disability Discharges Have Low Income, Low Net Worth, and Are Unlikely to Have Tax Liability

The group of borrowers currently eligible for the streamlined discharge process established by the Department of Education has virtually no earned income. According to 2014 data from the Social Security Administration, over 80% of individuals with the "medical

---

[12] 20 CFR 404.1590(c).
[13] Bruce D. Meyer and Wallace K.C. Mok, "Disability, Earnings, Income and Consumption," National Bureau of Economic Research Working Paper 18869 (March 2013) (online at: http://www.nber.org/papers/w18869).
[14] U.S. Department of Education, "Total Matches of Borrowers with Disabilities Eligible for Total and Permanent Discharge (TPD)" (March 18, 2016) (online at: http://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities).
[15] White House Office of the Press Secretary, "FACT SHEET: A Student Aid Bill of Rights: Taking Action to Ensure Strong Consumer Protections for Student Loan Borrowers" (March 10, 2015) (online at: https://www.whitehouse.gov/the-press-office/2015/03/10/fact-sheet-student-aid-bill-rights-taking-action-ensure-strong-consumer-).
[16] U.S. Department of Education, "Total Matches of Borrowers with Disabilities Eligible for Total and Permanent Discharge (TPD)" (March 18, 2016) (online at: http://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities).

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

improvement not expected" (MINE) designation had *zero* earnings for the entire year.[17] The 16% of MINE beneficiaries who reported any earnings averaged only $8,000 in annual earnings – far below the eligibility threshold for TPD loan discharges ($16,020).[18]

Moreover, all borrowers who receive TPD loan discharges through the newly-established streamlined process are already subject to three years of post-discharge monitoring. If, at any point during that three year period, a borrower's earnings exceed the federal poverty threshold for a family of two ($16,020), the Department of Education will reinstate the borrower's loan.[19] ED requires borrowers who have been granted a discharge to certify their earnings level for the next three years by submitting annual forms and submitting documentation, such as an income tax return, W-2, or pay stub. The earnings limit of a two-person family applies to borrowers seeking a total and permanent disability discharge regardless of their family size. In other words, the student loan debt of borrowers with total and permanent disability is *only* discharged if the federal government has already determined that the borrower has earnings below the poverty level and these earnings will remain below the poverty level for at least three years.

Treasury is *required* to exclude all discharge of indebtedness income for insolvent individuals under IRC section 108(a), which states that, "Gross income does not include any . . . discharge[d] . . . indebtedness of the taxpayer if . . . the discharge occurs when the taxpayer is insolvent."[20]

Under IRC Section 108(d)(3), insolvency for the purposes of discharge of indebtedness income applies only to the extent that a taxpayer's liabilities exceed her assets.[21] I therefore directed my staff to seek additional information on the assets and liabilities of totally and permanently disabled Social Security beneficiaries. My staff obtained data from two sources.

At my request, researchers at the Center for Retirement Research at Boston College analyzed 2013 Survey of Consumer Finance (SCF) data collected by the Board of Governors of the Federal Reserve to calculate the net worth of beneficiaries receiving SSI or SSDI benefits.[22] The data show that median net worth for this group was only $1,500.[23] The 95% confidence interval for this group of beneficiaries extends below a net worth of zero, meaning we cannot rule out the possibility that the median SSDI/SSI beneficiary has zero or negative net worth.

In addition, this SCF data almost certainly overstates the median net worth of eligible individuals with total and permanent disabilities because it includes a broader group of Social

[17] "Benefits and Income of Social Security Disability Insurance (SSDI) Beneficiaries and Supplemental Security Income (SSI) Recipients with Diary Status of Medical Improvement Not Expected (MINE)." Unpublished data provided by the Social Security Administration.
[18] U.S. Department of Health and Human Services, "Poverty Guidelines" (January 25, 2016) (online at: https://aspe.hhs.gov/poverty-guidelines).
[19] 34 CFR 685.213(b)(7)(i)A). The earnings limit of a two-person family applies to borrowers seeking a total and permanent disability discharge regardless of their family size.
[20] IRC 108(a)(1)(B).
[21] IRC 108(d)(3)
[22] See Tables 2 and 3 in the appendix for a comparison of categories of assets and liabilities included in the IRS's insolvency worksheet and captured in the SCF.
[23] Electronic mail from Matthew Rutledge to the Office of Senator Elizabeth Warren (September 20, 2016).

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

Security beneficiaries with disabilities: those with nonpermanent impairments or where medical improvement is expected, as well as beneficiaries of all earnings levels. As Table 1 in the appendix shows, annual earnings for all SSDI/SSI beneficiaries are roughly seven times higher than earnings for beneficiaries with a MINE designation. According to ED, average student loan balances for this population of totally and permanently disabled Social Security beneficiaries identified for federal student loan discharges were $18,026.19.[24]

The results are clear: a group of borrowers with median earnings of $0, median net worth of $1,500 and average student loan debt of $18,000 would have virtually no members with taxable income from a TPD. For the median borrower, $16,500 would be excludable from income due to insolvency, and the remaining $1,500 of discharge of indebtedness income would still be well below the threshold for incurring income tax liability given the borrower's baseline of $0 income.[25]

Because the SCF contains a relatively small sample of SSI and/or SSDI beneficiaries, my staff sought additional data on these households to confirm these net worth estimates. Data collected by the U.S. Census Bureau through the Survey of Income and Program Participation (SIPP) confirm that this population is substantially insolvent for purposes of IRC 108(a)(1)(b).[26] According to the Urban Institute's analysis of 2011 SIPP data, median net worth for households with SSI or SSDI beneficiaries and income below the TPD program's threshold was only $200.[27] As with the SCF, these figures are a conservative estimate of the net worth of TPD beneficiaries because they are not restricted to individuals with permanent disabilities.

Again, the results are clear: a Social Security beneficiary who is totally and permanently disabled with median earnings of $0, a median net worth of $200, and an average student loan balance of $18,000 may exclude $17,800 of their discharge of indebtedness income. And

[24] Data provided by the Education Department.

[25] Borrowers in this population have few other sources of income that could generate a tax liability. SSI benefits are not includable in gross taxable income, and only 5 percent of family income for SSI recipients comes from sources other than public assistance benefits (which are generally not taxable), earnings, or Social Security retirement and disability benefits. Although Social Security retirement and disability benefits can be taxable, the median SSI beneficiary receives too small of a share of their income from these sources (less than a quarter) for it to be included in gross taxable income. Median monthly income for SSI beneficiaries is only $1,333, meaning that the median recipient would receive less than $4,000 annual income from taxable Social Security benefits. SSDI beneficiaries receive a higher share (58 percent) of their family income from potentially taxable Social Security, but median monthly incomes for this group of beneficiaries is only $1,939, meaning that the median beneficiary would still make too little to incur tax liability on Social Security benefits. Only 11 percent of the family income of SSDI beneficiaries comes from property or "other" sources that could potentially be taxable. Michelle Stegman Bailey and Jeffrey Hemmeter, "Characteristics of Noninstitutionalized DI and SSI Program Participants, 2013 Update," Research and Statistics Note No. 2015-02, SSA Office of Retirement and Disability Policy and Office of Research, Evaluation, and Statistics (September 2015) (online at: https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html), Tables 4 and 11. Median monthly income of SSI and SSDI beneficiaries from Urban Institute analysis of 2011 data from the Survey of Income and Program Participation. Electronic mail from Emma Kalish to the Office of Senator Elizabeth Warren (September 21, 2016).

[26] See Tables 2 and 4 in the appendix for a comparison of assets and liabilities included in the IRS's insolvency worksheet and the Survey of Income and Program Participation.

[27] Urban Institute analysis of 2011 data from the Survey of Income and Program Participation. Electronic mail from Emma Kalish to the Office of Senator Elizabeth Warren (September 21, 2016).

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

because this taxpayer has earnings of $0, the remaining $200 in taxable income still is not sufficient to incur tax liability.

Treasury Has the Authority to Provide Guidance to Insolvent Borrowers

While the insolvency exclusion was granted by Congress, it is Treasury's job to administer it.[28] In previous cases in which a group of insolvent borrowers received federal student loan discharges, Treasury exercised its authority to provide guidance allowing insolvent taxpayers to avoid the administrative and compliance burdens when they receive discharge of indebtedness income. Most recently, in the case of borrowers who had attended schools owned by Corinthian Colleges, Inc., Treasury determined that the administrative and compliance burdens created by requiring each individual borrower to complete tax forms documenting their eligibility for an exception to the taxation of income from cancelled debts – and then requiring the IRS to process these applications – were simply not cost-effective. In guidance issued in December 2015, Treasury wrote:

> The Treasury Department and the IRS believe that most borrowers whose Corinthian student loans are discharged . . . would be able to exclude from gross income all or substantially all of the discharged amounts. . . . However, determining whether one or more of these exceptions is available to each affected borrower would require a fact intensive analysis of the particular borrower's situation to determine the extent to which the discharged amount is eligible for exclusion, under each of the potentially available exceptions. The Treasury Department and the IRS are concerned that such an analysis would impose a compliance burden on taxpayers, as well as an administrative burden on the IRS, that is excessive in relation to the amount of taxable income that would result. Accordingly the IRS will not assert that a taxpayer within the scope of this revenue procedure recognizes gross income as a result of the [Corinthian student loan] discharge process.[29]

This guidance was directed at both borrowers and ED. By stating that taxpayers receiving student loan discharges would not recognize gross income from the discharges, ED accordingly did not issue IRS Form 1099-C, the form reporting income related to "Cancellation of Debt," to students and the IRS.

One of the potential exceptions that the IRS cited to the taxation of income from the discharge of indebtedness for these former Corinthian students was the insolvency exclusion. The IRS did not possess detailed income or asset profiles for the population of former Corinthian students subject to the Rev. Proc. guidance, but nonetheless determined that many borrowers would be able claim this exclusion.

In this case, we have well-documented insolvency of these borrowers in Census data, Federal Reserve data, ED data and SSA data. Treasury should therefore provide class-wide

---

[28] "[T]he Secretary shall prescribe all needful rules and regulations for the enforcement of this title...". IRC 7805(a).
[29] Internal Revenue Service, Rev. Proc. 2015-57 (December 21, 2015) (online at https://www.irs.gov/irb/2015-51_IRB/ar07.html).

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

guidance applying the insolvency exclusion to these totally and permanently disabled Social Security beneficiaries and direct ED not to issue 1099-Cs for this population.

Treasury's Failure to Issue Guidance Will Harm Borrowers and Taxpayers

Treasury's ongoing failure to provide guidance will impose an extraordinary compliance burden on Social Security beneficiaries who are totally and permanently disabled, while also triggering unnecessary administrative burden on both the IRS and ED.

Absent class-wide guidance from Treasury, the Education Department will have to issue approximately 387,000 1099-Cs to borrowers who receive loan disbursements because they are totally and permanently disabled.

The first impact of this decision will be on these borrowers, who will have to go through an onerous and complicated process with the IRS to prove insolvency and qualify for exclusion of this discharge of indebtedness income. In order to demonstrate insolvency, each totally and permanently disabled borrower will need to file IRS Form 982 with her tax return.[30] Not only are most taxpayers unaware that such an exclusion exists, but the "insolvency calculation is notoriously complex, particularly for people who are dealing with medical problems"[31] The IRS Volunteer Income Tax Assistance program, which offers free tax help to individuals with disabilities, does not provide support for filling out the insolvency worksheet or preparing tax returns that include a Form 982.[32] Moreover, the income levels of these taxpayers is likely so low they are generally under no obligation to file a tax return at all, let alone an additional form 982. Many of these taxpayers are likely to either fail to claim a tax benefit they are due under the law, or fail to file.

The next set of impacts will be on the IRS and its staff. If borrowers do not file showing proof of insolvency, they will be captured by the IRS in its Automated Underreporter (AUR) program. The IRS will likely send AUR notices to these individuals and will have to make tens or even hundreds of thousands of independent insolvency determinations for taxpayers who ultimately will be unlikely to have a tax liability. Additionally, these individuals could be assessed failure to file and failure to pay penalties as well as interest charges on any income tax liabilities the IRS asserts and assesses.

Should the IRS mistakenly determine that these Social Security beneficiaries who are totally and permanently disabled owe a tax debt, a debt that they cannot afford to pay, the IRS could garnish federal benefits and tax refunds, seize cash from bank accounts, and garnish a significant portion of an individual's wages. Federal law also allows the IRS to seize assets – such as a house or vehicle – in order to satisfy tax debts. Beyond the forgiven loan balance, this debt could also include assessed failure to file and failure to pay penalties as well as interest

[30] Internal Revenue Service, "Publication 4681: Canceled Debts, Foreclosures, Repossessions, and Abandonments (for Individuals" (2015) (online at: https://www.irs.gov/pub/irs-pdf/p4681.pdf).
[31] Tara Siegel Bernard, "Disabled Borrowers Trade Loan Debt for a Tax Bill from the I.R.S.," *The New York Times* (March 27, 2014) (online at: http://www.nytimes.com/2014/03/28/your-money/disabled-borrowers-trade-loan-debt-for-a-tax-bill-from-the-irs.html?_r=0).
[32] IRS Publication 3676-B (online at: https://www.irs.gov/pub/irs-pdf/p3676bsp.pdf).

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

charges on any income tax liabilities the IRS asserts and assesses, further ballooning the borrower's liability beyond the original student loan balance with which ED and SSA initially sought to assist borrowers.

Confusion over the reporting of these loan discharges could also severely impact borrowers' eligibility for advance payment of premium tax credits, which help low- and moderate-income individuals afford health insurance purchased through the Health Insurance Marketplace.[33] And it could also trigger the loss of other state government benefits —such as means-tested housing or food assistance —that rely on taxable income as a measure of eligibility. Ultimately, given the costs of filing and the potential risks of garnishment, additional tax credits, or other federal and state benefits, the streamlined loan discharge process could leave borrowers who are totally and permanently disabled even worse off than before their loan was discharged.

Request for Additional Information

ED and the SSA have worked together to create a streamlined process to discharge the debt of borrowers with total and permanent disabilities. The Treasury Department should not undermine these efforts by failing to administer existing income tax exclusions available under the law. There is no justification for imposing demanding and unnecessary compliance burdens on totally and permanently disabled Social Security beneficiaries and significant administrative burdens on ED and the IRS.

Treasury has already established a relevant precedent. In the cases of former Corinthian students, borrowers identified by ED were able to exclude from gross income all of their discharged indebtedness as a result of Treasury's guidance. Rather than requiring hundreds of thousands of these borrowers to complete complex paperwork to demonstrate their eligibility for this exception, Treasury acted to protect these students and ease their compliance burden. The almost 400,000 borrowers with total and permanent disabilities are in a similar situation: SSA already possesses detailed administrative records of the very low earnings of this population, and there is no need to impose a substantial and unnecessary compliance burden on these borrowers and raise the risk of unnecessary audits and undue enforcement. For those who make mistakes on this new filing burden, the consequence of the loan discharge could be worse than default.

I urge Treasury issue to public guidance affirming that (1) TPD discharges carried out through this new streamlined process are non-taxable events due to the known insolvency of the recipients and (2) that ED need not issue 1099-Cs for these streamlined discharges. I ask that you provide my staff with a briefing on these efforts as rapidly as possible and before October 31.

Should Treasury continue to withhold class-wide guidance for the newly streamlined discharges for Social Security beneficiaries with total and permanent disabilities, I ask that your

[33] Federal Student Aid, "Frequently Asked Questions (FAQs) About Total and Permanent Disability Discharge" (online at: https://disabilitydischarge.com/faqs).

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

staff come to this briefing prepared to respond to the following questions:

1. What are the laws, regulations, authorities or other precedent that prevent Treasury or IRS from administering the insolvency exclusion, already exercised in Rev. Proc. 2015-57, for totally and permanently disabled Social Security beneficiaries identified through ED and SSA's data-matching?

2. What are the laws, regulations, authorities or other precedent that prevent Treasury or IRS from issuing guidance under the General Welfare Doctrine, as originally applied to disabled beneficiaries of government services in Rev. Rul. 57-102 and further elaborated in my letter to you dated August 11, 2015[34], for student loan borrowers eligible for TPD discharges?

3. What are the laws, regulations, authorities or other precedent that prevent Treasury or IRS from issuing guidance specifying that total and permanent disability discharges are to be considered a qualifying scholarship under section 117, and thus excluded from gross income, for student loan borrowers eligible for TPD discharges?[35]

4. What are the laws, regulations, authorities or other precedent that prevent Treasury or IRS from issuing guidance specifying that total and permanent disability discharges are to be considered a significant debt modification or the discharge of a contingent liability, and thus excluded from gross income, for student loan borrowers eligible for TPD discharges?[36]

5. What is the estimated cost to the IRS of administering 387,000 AUR audits and subsequent debt collection activities on 387,000 totally and permanently disabled Social Security beneficiaries with median earnings of $0 and median net worth of $200? Does the amount of tax revenue the IRS anticipates bringing in from this population exceed the estimated cost of administering these activities and audits?

I look forward to your response. If you have any questions, please contact Jeremy Bearer-Friend in my office at (202)-224-4543.

Sincerely,

Elizabeth Warren

[34] https://drive.google.com/file/d/0B0zArXf6ezMiUDNqejdDMVBseDQ/view
[35] John. R. Brooks. Treasury Should Exclude Income from Discharge of Student Loans. *Tax Notes*, August 1, 2016, p. 751.
[36] Ibid.

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

Table 1. Earnings of SSDI/SSI Beneficiaries and Beneficiaries with MINE Designation

	SSDI/SSI (All)	MINE
Mean Annual Earnings (2014 dollars)	$8,676	$1,293

Note: Annual earnings for all SSDI/SSI beneficiaries from Urban Institute analysis of data from the Survey of Income and Program Participation; data on 2011 monthly earnings annualized and adjusted to 2014 dollars. Electronic mail from Emma Kalish to the Office of Senator Elizabeth Warren (September 30, 2016). Data on MINE beneficiary earnings from "Benefits and Income of Social Security Disability Insurance (SSDI) Beneficiaries and Supplemental Security Income (SSI) Recipients with Diary Status of Medical Improvement Not Expected (MINE)." Unpublished data provided by the Social Security Administration.

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

Table 2. Assets and Liabilities Included by IRS for Insolvency under IRC 108(a)(1)(b)

ASSETS	LIABILITIES
• Cash and bank account balances	• Credit Card
• Real property, including the value of land (can be main home, any additional home, or property held for investment or used in a trade or business)	• Mortgage(s) on real property (including first and second mortgages and home equity loans) (mortgage(s) can be on personal residence, any additional residence, or property held for investment or used in a trade or business)
• Cars and other vehicles	• Car and other vehicle loans
• Computers	• Medical bills owed
• Household goods and furnishings (for example, appliances, electronics, furniture, etc.)	• Student loans
• Tools	• Accrued or past-due mortgage interest
• Jewelry	• Accrued or past-due real estate taxes
• Clothing	• Accrued or past-due utilities (water, gas, electric)
• Books	• Accrued or past-due child care costs
• Stocks and bonds	• Federal or state income taxes remaining due (for prior tax years)
• Investments in coins, stamps, paintings, or other collectibles	• Judgments
• Firearms, sports, photographic, and other hobby equipment	• Business debts (including those owed as a sole proprietor or partner)
• Interest in retirement accounts (IRA accounts, 401(k) accounts, and other retirement accounts)	• Margin debt on stocks and other debt to purchase or secured by investment assets other than real property
• Interest in a pension plan	• Other liabilities (debts) not included above
• Interest in education accounts	
• Cash value of life insurance	
• Security deposits with landlords, utilities, and others	
• Interests in partnerships	
• Value of investment in a business	
• Other investments (for example, annuity contracts, guaranteed investment contracts, mutual funds, commodity accounts, interests in hedge funds, and options)	
• Other assets not included above	

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

Table 3. Assets and Liabilities Included in SCF Calculation of Median Net Worth of $1,500

ASSETS

Financial Asset

- Checking
- Saving
- Money Market Deposit
- Money Market Mutual Funds
- Call Accounts
- Transaction Accounts
- CDs
- Stocks
- Bonds, not including bond funds or savings bonds
- Savings Bonds
- Cash Value of Whole Life Insurance
- Annuities
- Trusts and managed investment Accounts
- Mutual Funds
    - Stock mutual funds
    - Tax-free bond mutual funds
    - Government bond mutual funds
    - Other bond mutual funds
    - Combination and other mutual funds

Non-Financial Asset

- Vehicles
- Primary Residence
- Other Real Estate and Land Contracts
- Business
- Other Non-Financial

Defined Contribution

- IRAs
- Previous Job DC balance
- Current Job DC balance

LIABILITIES

Housing Debt

- Mortgage
- HELOC
- Home Equity
- Other LOC
- Other Real Estate Debt (incl. land contracts)

Credit Card

Installment Loans

- Other purchase loans
- Vehicle
- Additions or Improvement on Property
- Education loans

Other Debts

- Loans on Pensions
- Loans on Life Insurance
- Margin Loans
- Misc.

Note: For a comprehensive list of asset and liability variables in the Survey of Consumer Finances, see the technical documentation available on the Federal Reserve website at: https://www.federalreserve.gov/econresdata/scf/scfindex.htm.

taxanalysts®
DOCUMENT SERVICE
Doc 2016-20455 (14 pgs)

Table 4. Assets and Liabilities Included in SIPP Calculation of Median Net Worth of $200

Net worth measure estimated using SIPP data includes total assets minus total liabilities. Assets are the sum of financial assets (e.g., bank accounts, stocks, bonds, and 401(k)s/IRAs) and nonfinancial assets (e.g., homes and real estate, businesses, and vehicles). Liabilities include both unsecured debt (e.g., credit card balances) and secured debt (e.g., mortgages and vehicle loans).

ASSETS

Financial Assets

- Checking accounts
- Savings account
- Money market account
- CDs
- Stocks
- Municipal or corporate bonds
- U.S. Government securities
- Mutual funds
- Bonds or savings bonds
- IRA or Keogh accounts
- 401(k), 403b, or Thrift account
- Life insurance policies

Non-Financial Assets

- Real estate
- Business interest
- Vehicles (including recreational vehicles and boats)

LIABILITIES

- Mortgage and home equity debt
- Rental property debt
- Mobile home debt (mortgage, contract, installment loan, other)
- Bank loans
- Vehicle debt
- Credit card debt
- Other debt

Note: For a comprehensive list of asset and liability variables in the Survey of Income and Program Participation, see the technical documentation available on the Census Bureau website at: http://www.census.gov/programs-surveys/sipp/tech-documentation.html.