

November 21, 2019

VIA ELECTRONIC MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave, S.W.
LBJ 2E320
Washington, D.C. 20202
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the United States Department of Education (“ED” or “the Department”), 34 C.F.R. Part 5, the National Student Legal Defense Network (“Student Defense”) makes the following request for: (i) updated data regarding the number of borrowers who have been positively identified as eligible for total and permanent disability (TPD) discharges through the Department’s matching agreements with the Social Security Administration (SSA) and Department of Veterans Affairs (VA), and (ii) the number of parent borrowers who have taken out parent PLUS loans on behalf of borrowers who have been identified through the SSA and VA matching programs to date, and the total dollar amount of those loans.

Under the Higher Education Act, individuals who are totally and permanently disabled are eligible to have their outstanding federal student loans forgiven. Parents who borrow funds on their child’s behalf, however, have no similar recourse based on their child’s TPD status.

On April 12 2016, the Department announced that it was working with the SSA to complete a data match to identify federal student loan borrowers who are eligible for a TPD discharge (“SSA Process”).¹ Approximately 387,000 borrowers were positively identified through the first set of SSA Process matches, which were conducted in December 2015 and March 2016.² There

¹ See Press Release, U.S. Dept. of Education (April 12, 2016), *available at* <https://www.ed.gov/news/press-releases/us-department-education-acts-protect-social-security-benefits-borrowers-disabilities>.

² *Id.*

is no public reporting regarding the number of borrowers who took out parent PLUS loans on behalf of borrowers who matched through the SSA Process.

The Department announced a similar matching agreement with the VA on April 16, 2018 (“VA Process”).³ According to an August 21, 2019 Presidential Memorandum, approximately 50,000 borrowers have matched through the VA Process.⁴ There is no public reporting regarding the number of borrowers who took out parent PLUS loans on behalf of borrowers who matched through the VA Process.

Request

Student Defense hereby requests that the Department produce the following within twenty business days:

1. For borrowers who have been identified as eligible through the SSA Process to date (i.e. borrowers who have “matched”), documents sufficient to show: (i) the total number of borrowers who have matched; (ii) of those matches, the total number of borrowers that have received TPD discharges to date; and (iii) the total dollar value of their discharged federal student loan debt.
2. Documents sufficient to show: (i) the total number of borrowers who have taken out parent PLUS loans on behalf of borrowers who have matched through the SSA Process to date; and (ii) the total dollar amount of those parent PLUS loans. (Put differently, the number of parent PLUS borrowers associated with children who have matched through the SSA Process to date, and the total dollar amount of those parent PLUS loans.)
3. For borrowers who have been identified as eligible through the VA Process to date (i.e. borrowers who have “matched”), documents sufficient to show: (i) the total number of borrowers who have matched; (ii) of those matches, the total number of borrowers that have received TPD discharges to date; and (iii) the total dollar value of their discharged federal student loan debt.
4. Documents sufficient to show: (i) the total number of borrowers who have taken out parent PLUS loans on behalf of borrowers who have matched through the VA Process to

³ See Press Release, U.S. Dept. of Education (April 16, 2018), *available at* <https://www.ed.gov/news/press-releases/us-department-education-and-us-department-veterans-affairs-team-simplify-student-loan-discharge-process-disabled-veterans>.

⁴ See Presidential Memorandum on Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans (Aug. 21, 2019), *available at* <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-discharging-federal-student-loan-debt-totally-permanently-disabled-veterans/>; *see also* Press Release, U.S. Dept. of Education (Aug. 21, 2019), *available at* <https://www.ed.gov/news/press-releases/trump-administration-automatically-forgive-federal-student-loan-debt-totally-and-permanently-disabled-veterans>.

date; and (ii) the total dollar amount of those parent PLUS loans. (Put differently, the number of parent PLUS borrowers associated with children who have matched through the VA Process to date, and the total dollar amount of those parent PLUS loans.)

Note: For each of these requests, in lieu of documents Student Defense would accept a chart or description providing the requested information.

FOIA presumes disclosure. Indeed, “[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a ‘strong presumption in favor of disclosure.’” *AP v. FBI*, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516 at *10 (D.D.C. Sept. 30, 2017) (quoting *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, *i.e.*, if disclosure would “harm an interest protected by an exemption” or is otherwise “prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). If ED takes the position that any portion of any requested record is exempt from disclosure, Student Defense requests that you “demonstrate the validity of [each] exemption that [ED] asserts.” *People for the American Way v. U.S. Dep’t of Educ.*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide Student Defense with a Vaughn Index “which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption’s relevance.” *Id.* (citing *Johnson v. Exec. Office for U.S. Att’y’s*, 310 F.3d 771, 774 (D.C. Cir. 2002)). *See also Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification specifically identifying the reasons why the exemption is relevant. *See generally King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In addition to the records requested above, Student Defense also requests records describing the processing of this request, including records sufficient to identify search terms used (if any); the locations and custodians searched; and any tracking sheets, questionnaires, emails, or certifications completed by, or sent to, ED personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

Student Defense seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, ED has a duty to construe a FOIA request liberally.

In conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available. Recent technology advances may render ED’s prior FOIA practices unreasonable. Moreover, not only does this request require the agency to conduct a

search, but individual custodians must conduct their own searches in order to make sure that documents are appropriately collected.

To ensure that this request is properly construed and does not create any unnecessary burden on ED, Student Defense welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material via email to alex@defendstudents.org. We welcome any materials that can be provided on a rolling basis. Nevertheless, Student Defense fully intends to hold ED to the timeframe required by statute for a response to this request.

Request for Waiver of Fees

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33(a), Student Defense requests a waiver of fees associated with the processing of this request because: (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; *and* (2) disclosure of the information is not primarily in the commercial interest of the requester.

Disclosure of Information is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government

1. The FOIA request specifically relates to the operations or activities of the government. The documents requested herein relate directly to the Department's management and operation of the TPD program under Title IV of the Higher Education Act, and therefore relate specifically to the operations or activities of the government.

2. The requested documents will likely contribute to an understanding of those specific operations or activities. The requested documents are essential to understanding the current status of discharges under the TPD matching programs with the SSA and VA, as well as the potential number of parent borrowers who would be eligible for relief if the TPD program were to be expanded to cover parent PLUS borrowers, as recently proposed in the College Affordability Act of 2019 (House) and in Domenic and Ed's Law, by Senators Portman, Coons, and King. As such, they will contribute to a greater understanding of this central Department of Education function.

3. The disclosure will contribute to a greater understanding on the part of the public at large. Student Defense seeks this information to increase public understanding regarding the Department's implementation of the TPD program under the SSA Process and VA Process, as well regarding the number of parent borrowers that are potentially impacted by an expansion of the TPD program to cover parent PLUS borrowers. Student Defense has the

capacity to analyze any documents provided and disseminate its analysis to the public through its website and other sources.

4. Disclosure will “significantly” contribute to the public’s understanding of government activities. This request seeks information that will allow Student Defense to more completely understand the scale and status of the Department’s implementation of the TPD regulation under the SSA Process and the VA Process. In addition, it will significantly contribute to the public’s understanding regarding the potential impact of an expansion of the TPD regulation to apply to parent PLUS borrowers, as currently proposed by the College Affordability Act and Domenic and Ed’s Law, *supra*.

Disclosure of Information is Not in the Commercial Interest of Student Defense

This request is fundamentally non-commercial. Student Defense is a non-profit, non-partisan 501(c)(3) organization. Student Defense’s mission is to work, through a variety of means, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. We also believe that transparency is critical to fully understanding the government’s role in student protections and promoting opportunity. As noted above, Student Defense has the capacity to make the information it receives available to the public through reports, social media, press releases, litigation filings, and regulatory comments to government agencies. For these reasons, Student Defense qualifies for a fee waiver.

* * *

Student Defense looks forward to working with you on this request. If you have any questions or concerns, or anticipate any problems in complying with this request, please contact me at alex@defendstudents.org. If Student Defense’s request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact me immediately.

Sincerely,

/s/ Alexander Elson

Alexander Elson
Senior Counsel