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A Union of Professionals

KEEPING THE PROMISE OF PUBLIC SERVICE LOAN FORGIVENESS

December 19, 2018

Borrowers deserve to know what went wrong and who is responsible. This investigation will get answers for borrowers, demand accountability from the student loan industry, and protect a generation of public service workers with student debt.

A Note from the American Federation of Teachers and the Student Borrower Protection Center

The Public Service Loan Forgiveness (PSLF) program was created in 2007 as part of the bipartisan College Cost Reduction and Access Act (CCRAA) to support America's public service workers faced with financial struggles stemming from student loan debt.¹ The PSLF program is premised on the notion that because public service is vital, yet the pay is not often commensurate with its value, after ten years of payments, borrowers working in public service should have their remaining student loan balance forgiven so they can afford other financial goals—families, homeownership, retirement, and other major milestones of American life that are otherwise out of reach by the economic pressures of student debt.² PSLF is designed to support people working in a wide range of high-demand public service careers, from servicemembers and teachers, to police officers and nurses, and the millions of public servants in between.³

For years, a range of law enforcement agencies, government auditors, and nonprofit organizations have identified problems with the implementation of the PSLF program—both by the U.S. Department of Education (ED) and the servicers it has tasked with administering the program.⁴ But only in the

¹ See 20 U.S.C. § 1001.

² See Consumer Financial Protection Bureau (CFPB), *Public Service and Student Debt* (Aug. 2013), https://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf; CFPB, *Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities* (June 2017), https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf [hereinafter *Staying on track*].

³ See, e.g., U.S. Dept. of Defense, *Information Paper: HR4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER Act)*, https://www.insidehighered.com/sites/default/server_files/media/Department-of-Defense-on-PROSPER-Act.pdf.

⁴ See, e.g., Gov't Accountability Office (GAO), *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers* (Sep. 5, 2018), <https://www.gao.gov/products/GAO-18-547>; U.S. Dept. of Education, Office of the Inspector General, *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs* (Jan. 31, 2018), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf>; *Staying on track*, *supra* note 2; https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf; Office of Attorney General Maura Healy, AG Healey

past year have the first cohort of public service workers tried to apply for loan forgiveness under the program. The result—more than 99 out of every 100 public service workers who applied for loan forgiveness were rejected.⁵

And yet, this first round of denials is just the beginning. To the millions of dedicated public service workers who have spent years relying on the promise of the PSLF program, these rejections are an ominous foreshadowing of their financial futures. In effect, Washington has told these borrowers that their shot at economic stability will be denied when their turn comes.

This is a national scandal.

The true scope of the administrative, policy, and loan servicing failures that lie underneath the flailing implementation of PSLF are still unknown. Recent events, from litigation to data disclosures, offer a mere glimpse of the scale of these failures.⁶ Data suggests that millions of student loan borrowers will miss out on these key protections, but there remain big gaps in the public accounting of industry and Department of Education failures. For the leaders in and out of government fighting on behalf of public service workers who have relied on these protections, it is critical to fill these gaps by uncovering the evidence to document these failures.

We are launching an investigation to do exactly that.

ED and its contracted student loan servicers have never revealed key documents and data that show how and why these breakdowns occur. From ED's guidance for implementation of the PSLF program, to servicers' data on execution of program requirements, to government audits documenting breakdowns in processes and technology, there exists evidence demonstrating the scope of harm to borrowers. But this critical information currently sits in the shadows, out of reach from public scrutiny. And although millions of American workers are relying on the promise of PSLF, ED continues to shield the missteps of the student loan servicing industry at the expense of millions of dedicated public

Sues to Protect Public Service Loan Forgiveness (Aug. 23, 2017), <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html> [hereinafter *Healy lawsuit*]; The Century Foundation, *Student Loan Borrower Relief Hiding in Plain Sight* (July 21, 2016), <https://tcf.org/content/report/student-loan-borrower-relief-hiding-plain-sight/?agreed=1>.

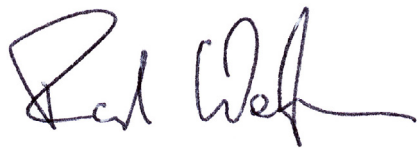
⁵ U.S. Dept. of Education, Office of Federal Student Aid, FSA Data Center, *Public Service Loan Forgiveness (PSLF) Program Data* (June 30, 2018), <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/pslf-report.xls> [hereinafter *PSLF data*]; see also NPR, *All Things Considered: Data Shows 99% Of Applicants For A Student Loan Forgiveness Program Were Denied* (Sep. 21, 2018), <https://www.npr.org/2018/09/21/650508381/data-shows-99-of-applicants-for-student-loan-forgiveness-denied>.

⁶ See, e.g., *PSLF data*, *id.*; American Federation of Teachers, *Class-Action Lawsuit Launched Against Student Loan Servicer Navient over PSLF* (Oct. 3, 2018) <https://www.aft.org/press-release/class-action-lawsuit-launched-against-student-loan-servicer-navient-over> [hereinafter *AFT lawsuit*]; *Daniel v. Navient Solutions, LLC*, Complaint (M.D. Fla. Oct. 25, 2017).

service workers.

This is unacceptable. We are demanding answers about exactly how and why borrowers continue to be failed by this broken system, and how they can fight back.

The findings of our investigation will serve as a critical tool for borrowers, advocates, attorneys, and policymakers fighting to fix the problems of the PSLF program. Our investigation will deliver key insights to attorneys seeking justice and restitution for harmed borrowers. Our findings will give policymakers the necessary facts to make important changes to the existing program and help borrowers harmed by ED and servicers' failures. And finally, our investigation will shine a light into the shadows—forcing ED and its servicers to do better by this nation's public service workers.



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Table of Contents

A Note from American Federation of Teachers and Student Borrowers Protection Center	03
Introduction	07
Part One: the Right Type of Loan	09
Part Two: the Right Type of Repayment Plan	12
Part Three: the Right Number of Qualifying Payments	15
Part Four: the Right Type of Employer	18
Part Five: Investigating a Decade of Mismanagement and Inadequate Oversight	21
Conclusion	22
Appendix	23

Introduction

In 2007, Congress created the Public Service Loan Forgiveness (PSLF) program to reassure public service workers that their service to their communities would not be to their long term financial detriment, in spite of the rising cost of higher education.⁷ But the program's flawed implementation and the U.S. Department of Education's (ED) inadequate oversight of the student loan servicing industry have created mistakes and missteps that have denied borrowers the loan forgiveness they earned through that very service.⁸ As a result, the economic futures of millions of borrowers have been jeopardized. The repeated, systematic failures of these companies have created a status quo where borrowers are at the mercy of an industry that benefits financially from steering borrowers off course.⁹

Servicers play a critical role in ensuring borrowers can access federal consumer protections. But complaints from borrowers and actions by law enforcement officials show the variety of ways in which servicing practices lead to borrowers being unfairly and illegally denied these protections.¹⁰ However, these stories only reveal the tip of the iceberg—the Department of Education and state-based lenders currently

⁷ See, e.g., 110 Cong. Rec. S9574-02 (July 19, 2007) (Statement of Sen. Leahy) ("Because tuition has increased well beyond the rate of student assistance, students today are graduating with staggering debt burdens. With the weight of this debt on their backs, recent college graduates understandably gravitate toward higher paying jobs that allow them to pay back their loans. Unfortunately, all too often these jobs are not in the arena of public service or areas that serve the vital public interests of our communities and of our country. We need to be doing more to support graduates who want to enter public service, be it as a child care provider, a doctor or nurse in the public health field, or a police officer or other type of first responder.").

⁸ GAO, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers* (Sept. 5, 2018), <https://www.gao.gov/products/GAO-18-547> ("Education provides piecemeal guidance and instructions to the PSLF servicer it contracts with to process certification requests and loan forgiveness applications. This information is fragmented across the servicing contract, contract updates, and hundreds of emails. As a result, PSLF servicer officials said their staff are sometimes unaware of important policy clarifications.").

⁹ See Susan Dynarski, *An Economist's Perspective on Student Loans in the United States*, Brookings Institute (Sept. 2014), http://www.brookings.edu/~media/research/files/papers/2014/09/economist_perspective_student_loans_dynarski/economist_perspective_student_loans_dynarski.pdf ("Here we have a classic 'principal-agent' problem, with the agent (the student loan servicers) having little incentive to act in the best interests of the principal (the federal government). Student loan servicers don't have much incentive to prevent borrowers from defaulting, because the servicers either don't own the underlying loans or, if they do, face few costs if a borrower defaults. Restructuring a borrower's payments and preventing default requires effort, and the beneficiary of this effort is the government and the student – not the servicer.").

¹⁰ See, e.g., *Staying on track*, *supra* note 2; *AFT lawsuit*, *supra* note 6; *Healy lawsuit*, *supra* note 4.

sit on critical records demonstrating how the practices of the federal government and its contractors cause irreparable harm to millions of borrowers. And more importantly, these documents house a roadmap for holding them accountable.

As this report describes in more detail, servicers have created roadblocks for borrowers at each step in the process of qualifying for PSLF. This investigation uses inquiries pursuant to the Freedom of Information Act (FOIA) and state open records law, combined with court records, investor disclosures, consumer complaints, and other documents in the public domain, to expose how servicing breakdowns impede borrowers' ability to meet the requirements of the PSLF program.

Part One: the Right Type of Loan

For a student loan borrower to be eligible for Public Service Loan Forgiveness, she must have “the right type of loan.” This description is shorthand for loans originated under the federal Direct Loan program, as defined in the Higher Education Act.¹¹

But many public service workers, including the vast majority who borrowed federal student loans prior to July 2010, took out loans originated under a different, older federal student loan program—the Federal Family Education Loan (FFEL) Program.¹² Under the FFEL program, banks and other private and state-based lenders made student loans to borrowers that were backed by the federal government. These older, bank-based loans—without additional action by the borrower—are not eligible for PSLF.

In order for borrowers with FFELP loans to become eligible for PSLF, they must consolidate their FFELP loans into a Direct Consolidation Loan.¹³ In practice, the consolidation process pays off a borrower’s old FFELP loan balance with a new loan made under the Direct Loan program that is then eligible for PSLF.

Servicers have a responsibility to let borrowers with FFELP loans know the steps they can take to convert their loans into the right type of loan to become eligible for PSLF.¹⁴ Additionally, servicers have a duty to maintain the proper loan records for borrowers, and timely and accurately handle the process necessary to complete a consolidation.¹⁵ But over the years, borrowers have encountered a wide range problems when seeking to consolidate.¹⁶ Further, borrowers with FFELP loans have received inaccurate, misleading,

¹¹ See 34 C.F.R. § 685.219(c)(iii); U.S. Dept. of Education, Office of Federal Student Aid, *Public Service Loan Forgiveness* (accessed Dec. 17, 2018) <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#eligible-loans>.

¹² See U.S. Dept. of Education, Office of Federal Student Aid, FSA Data Center, *Portfolio Summary* (June 30, 2018), <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

¹³ See 34 C.F.R. § 685.219(c)(iii); U.S. Dept. of Education, Office of Federal Student Aid, *Public Service Loan Forgiveness* (accessed Dec. 17, 2018) <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#eligible-loans>.

¹⁴ See CFPB, *Education Loan Examination Procedures* (June 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201706_cfpb_Education-Loan-Servicing-Exam-Manual.pdf.

¹⁵ See 34 C.F.R. § 685.220(f).

¹⁶ See, e.g., *Staying on track*, *supra* note 2.

or conflicting information from loan servicers when inquiring about whether their loans were eligible for PSLF.¹⁷

By demanding documents from ED and from many of the private and state-based lenders that originated and continue to service FFELP loans, this investigation will expose:

What ED Tells Industry

- 1 What information ED directs companies that participate in the FFEL program, including FFEL lenders and student loan servicers, to provide borrowers who indicate that they work in a public service profession, including teachers, healthcare providers, and members of the armed services, and/or inquire about benefits available to public service workers;
- 2 What information about PSLF ED requires its own contracted federal student loan servicers to provide borrowers who have older loans made by banks and other private and state-based lenders now owned by the federal government, when a borrower has indicated that they work in public service;¹⁸

What Industry Tells Borrowers

- 3 What policies and procedures govern the information servicers provide to borrowers who express interest in protections provided to public service workers;

How ED Enforces Guidance

- 4 How ED enforces these requirements and monitors for compliance with any guidance to servicers about “the right type of loan,” including all instances where ED has cited student loan servicers for breakdowns and other potential violations; and

How Borrowers are Faring

- 5 The scale of the problems affecting borrowers with FFELP loans, including disclosing data on the number of borrowers with FFELP loans who have applied for PSLF, and the number of borrowers with FFELP loans that have signaled intent to pursue PSLF by completing an “Employer Certification Form.”

¹⁷ See, e.g., *Staying on track*, *supra* note 2; *AFT lawsuit*, *supra* note 6.

¹⁸ In 2008, Congress passed the Ensuring Continued Access to Student Loans Act (ECASLA), authorizing the federal government to purchase loans made by banks and other private lenders in order to bail out the FFEL program during the 2008 financial crisis. Pub. L. No. 110-122 Stat. 740 (2008). This legislation resulted in the acquisition of nearly \$200 billion in student loans by the federal government—loans that have the same terms and conditions as FFELP loans held by private creditors. For further discussion, see CFPB, *Student Loan Servicing* (Sep. 2015), https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf [hereinafter *Student Loan Servicing*].

Example: How FFEL servicers are impeding borrowers' efforts to earn PSLF

The companies that own and service older FFELP loans have a financial disincentive that discourages these companies from providing adequate and actionable information to borrowers trying get on track for PSLF.¹⁹ Specifically, once a borrower is advised of her right to pursue PSLF and takes action to get on track, the borrower would have to immediately consolidate her loan—costing the lender future interest revenue and costing the loan servicer a customer. Borrowers often describe being led astray by their FFEL servicers. For example:

All of my original loans for school were obtained under the [FFELP] loan program. When completing my [degree], the Public Service Loan Forgiveness program became available. I began repayment under the impression from Great Lakes that I would qualify for PSLF, so I make career plans to work in an academic setting, balancing the lower pay with the opportunity for forgiveness. I contacted Great Lakes annually for Income-Based Repayment (which then became Income-Driven Repayment) qualification, a requirement for loan forgiveness, each year confirming that my loans would qualify for PSLF and I received confirmation each year from Great Lakes that my loans would qualify. . . This spring I checked in again with Great Lakes knowing my 120 payments would be complete soon after 10 years of payments. For the first time in 9 years of yearly checking with Great Lakes I was informed that none of my loans qualify and I am left having made minimal payments on my loans under Income-Driven Repayment, accruing increased interest and leaving me with 6 more years of loan repayment, and no hope of loan forgiveness. I love my job but my financial plans are turned upside down because of the repeated and consistently bad advice I received from Great Lakes.²⁰

Recent litigation has raised serious allegations about how FFEL servicers describe to borrowers their right to consolidate their loans in order to pursue PSLF, and the process by which to do so.²¹ In cases across the country, borrowers allege that these companies routinely misled borrowers about their rights.²²

It is critical to make publicly available any guidance or procedures that ED requires or previously required of FFEL servicers when borrowers indicate that they are interested in PSLF. Responsive documents obtained through FOIA requests will reveal specific steps and actions that FFEL servicers are required to take when a borrower reaches out to express interest in the program. These records would allow individual borrowers and litigants the ability to determine the extent to which individual servicers—and the market as a whole—complied with these guidance documents.

¹⁹ See *Student Loan Servicing*, *supra* note 18; see also Dynarski, *supra* note 9.

²⁰ Consumer complaint, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2944222>.

²¹ See, e.g., AFT lawsuit, *supra* note 6; *Daniel v. Navient Solutions, LLC*, *supra* note 6.

²² See, e.g., AFT lawsuit, *supra* note 6; *Daniel v. Navient Solutions, LLC*, *supra* note 6.

Part Two: the Right Type of Repayment Plan

In addition to having the right type of loan, borrowers must also be enrolled in “the right type of repayment plan.”²³ Qualifying repayment plans include any type of Income-Driven Repayment (IDR) plan where a borrower’s monthly payment amount is tied to her income, rather than loan balance. Borrower’s must renew their enrollment in IDR plans each year in a process called “recertification.”²⁴

Unfortunately for borrowers, the process of picking the right type of repayment plan, including every step of the process to enroll in and recertify an IDR plan, is littered with obstacles. Borrowers rely on information from servicers during this process, but borrower complaints and law enforcement investigations show that this information is often inaccurate.²⁵ As a result, borrowers enroll in repayment plans that do not qualify for PSLF or spend months in forbearance, waiting for their servicer to process the correct repayment plan application. As borrowers hit roadblock after roadblock, breakdowns in the IDR program enrollment and process quickly become PSLF breakdowns.

By demanding documents from ED related to servicers’ handling of borrowers pursuing IDR, this investigation will expose:

What ED Tells Industry

- 1 What information ED requires federal student loan servicers to provide borrowers about enrolling in and recertifying IDR plans;

²³ 34 C.F.R. § 685.219(c)(iv); U.S. Dept. of Education, Office of Federal Student Aid, *Public Service Loan Forgiveness* (accessed Dec. 17, 2018) <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#qualifying-repayment-plan>.

²⁴ Borrowers are also able to make qualifying payments if they are enrolled in what is known as the “standard, 10-year repayment plan”—an option that requires a series of 120 monthly installment payments, at which point their loan is paid in full. 34 C.F.R. § 685.219(c)(iv)(C). For a borrower to obtain any benefit from PSLF, they must therefore spend at least some time in IDR, and the longer they are enrolled in IDR, the more money they will save under PSLF.

²⁵ See, e.g., CFPB, *Trying to enroll in an income-driven repayment plan? Avoid #ApplicationAbyss with our student loan tips and resources* (Aug. 18, 2016), <https://www.consumerfinance.gov/about-us/blog/trying-enroll-income-driven-repayment-plan-avoid-applicationabyss-our-student-loan-tips-and-resources>; CFPB, *Supervisory Highlights: Issue 13, Fall 2016* (Oct. 2016), https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf (“Examiners determined that servicers were engaging in the unfair practice of denying, or failing to approve, IDR applications that should have been approved on a regular basis.”).

- 2 What information ED requires federal student loan servicers to provide borrowers about the relationship between IDR and PSLF;
- 3 How ED requires federal student loan servicers to process IDR applications;

What Industry Tells Borrowers

- 4 What policies and procedures govern the information servicers provide to borrowers who are attempting to enroll in or recertify IDR plans, including borrowers working in public service;
- 5 How servicers establish processes and instruct personnel to handle applications to enroll in and recertify IDR plans to ensure borrowers receive timely and accurate information needed to complete their applications;

How ED Enforces Guidance

- 6 How ED enforces these requirements and monitors student loan servicers for compliance with all laws, regulations, guidance, and contract terms related to IDR enrollment and recertification, including all instances where ED has cited student loan servicers for breakdowns and other potential violations;
- 7 Any change in guidance from ED after January 1, 2016 related to the processing of IDR applications, including determining income for borrowers using alternative documentation of income; and

How Borrowers are Faring

- 8 The scale of the problems affecting borrowers seeking the right type of payment plan, including disclosing data on the number of borrowers who were enrolled in non-qualifying repayment plans when they applied for PSLF and the number of borrowers who were enrolled in non-qualifying repayment plans when they have signaled intent to pursue PSLF by completing an Employer Certification Form.

Example: How servicing failures cause borrowers' IDR payments to "snapback" to a higher standard payment

When borrowers are unable to recertify their IDR plan before the annual deadline, their monthly payments revert back to their standard 10-year payment amount.²⁶ This "snapback" comes with added costs for student loan borrowers—capitalized interest, missed qualifying payments for PSLF, and potentially months spent in forbearance while the borrower tries to recertify her IDR payment. Delayed recertifications can cost borrowers thousands of dollars and months or years of qualifying payments toward PSLF. But the fault often lies with student loan servicers that fail to timely process recertifications or fail to notify borrowers of recertification deadlines. For example:

*FedLoan Servicing received my request to recertify my income-driven repayment plan. [In response], I received notice that [stated] "At this time, we (FedLoan Servicing) are currently experiencing a high volume of IDR requests." This continues [to be] a consistent pattern of communication lags around IDR recertification requests of at least one complete billing cycle—seemingly pushing back their need to communicate around IDR recertification requests sufficiently long that borrowers' IDR plans will lapse, and borrowers will need to make full payments (this occurred last year, as I received multiple requests for information that FedLoan Servicing admitted to *not* needing. . .). However, at least three to four weeks were allowed to elapse between each communication I received from FedLoan Servicing, maximizing the number of billing cycles during which I was forced to make full payments after my IDR plan had lapsed. It now appears that FedLoan Servicing is engaging in similar delaying tactics this year, waiting over a month to respond to my IDR recertification request, and then only to make the excuse of "high volume" and provide *no* estimate of when this request will be processed.²⁷*

Exposing information about servicing breakdowns in the recertification process will show how snapback events cause harm to borrowers, particularly those pursuing PSLF. Furthermore, evidence exposing how servicers interact with borrowers and what ED directs servicers to do when a borrower approaches their recertification deadline will also shed light on where the servicing disconnect occurs, allowing policymakers to improve the servicing process moving forward and allow enforcement agencies and private litigants to seek justice for past breakdowns through the courts.

²⁶ See 34 C.F.R. § 685.219(c)(iv)(D).

²⁷ Consumer complaint, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/1855029>.

Part Three: the Right Number of Qualifying Payments

For borrowers with the right type of loan that is enrolled in the right type of repayment plan, qualifying for PSLF requires ten years (120 months) of monthly “qualifying payments.” Qualifying payments are payments made on time and equal to a pre-determined, “qualified” payment amount—an often opaque standard that has resulted a wide range of problems for borrowers.²⁸ There are many instances where a borrower may make a payment that is greater than their qualified payment amount—for example, an unscheduled extra payment, an overpayment, multiple partial payments, or some other type of nonstandard payment, in an attempt to make progress on their student loans. These nonstandard payments can cause borrowers problems because they may not be considered as qualifying—even when the amount paid equals or exceeds the amount due on a borrower’s bill. These problems can snowball over time and, as a result, borrowers spend thousands of dollars making months or years of payments that do not count toward loan forgiveness. Further exacerbating the problem, when borrowers encounter the type of IDR processing delays described in the preceding section, they may be advised by their student loan servicer to take a break from making payments entirely, known as a forbearance. Months spent in forbearance do not provide credit toward PSLF.

By demanding documents from ED related to servicers’ payment handling practices and borrower communications related to qualifying payments, this investigation will expose:

What ED Tells Industry

- 1 What information ED requires federal student loan servicers to provide borrowers about the qualifying payment requirements under PSLF;
- 2 How ED requires federal student loan servicers to process payments when a borrower makes a nonstandard payment;

²⁸ A payment counts toward the 120-month counter if the payment is made (1) after October 1, 2007; (2) during a month when the borrower was working full time for an eligible employer; and (3) on time—no later than 15 days after the scheduled due date. See 34 C.F.R. § 685.219(c)(1)(iii).

What Industry Tells Borrowers

- 3 What information servicers provide to borrowers about when payments qualify for PSLF, and more importantly, when they do not qualify;
- 4 What internal policies and procedures servicers follow to ensure payments are timely and correctly processed;
- 5 What internal policies and procedures servicers follow when a borrower makes a nonstandard payment;
- 6 How servicers identify obstacles to staying on track for PSLF, and how and if they communicate this information back to the borrower;

How ED Enforces Guidance

- 7 How ED enforces these requirements and monitors for compliance with any guidance to servicers about the right number of qualifying payments, including all instances where ED has cited student loan servicers for breakdowns and other potential violations; and

How Borrowers are Faring

- 8 The scope of the breakdowns affecting borrowers who try to make the right type of qualified payments, including disclosing data identifying the number of borrowers who complete a year of approved public service work, but receive credit for less than one year of qualified payments, and the number of borrowers who made a complete year of payments at the right payment amount, but lost credit for these payments because their loan was in “paid ahead” status.

Example: How ED guidance on handling partial payments causes problems for borrowers pursuing PSLF

In certain cases, a borrower may pay more than is owed on her monthly bill. Unless a borrower tells her servicer not to, the excess payment amount will be used to advance her due date, known as “paid ahead status.”²⁹ Borrowers have the option to choose whether or not to pay ahead, but often, servicers do not make borrowers aware of this choice or inform them of the implications of paid ahead status. Instead, servicers will automatically advance the borrower’s extra payments. As a result, borrowers are continually billed for less than their full IDR payment amount, rendering subsequent payments as non-qualifying for purposes of PSLF. In effect, even when borrowers make payments as requested on their loan bill, the status of their loan renders these payments void for the purpose of pursuing PSLF, costing borrowers hundreds or thousands of dollars. For example:

I am a nurse and have worked full time since 2012 aside from maternity leave. I was fortunate to qualify for [employer-based loan repayment assistance], which helps me make payments for 3 years, providing me more money each month than I am required to pay to [my servicer]. Recently I submitted my Public Service Loan Forgiveness (PSLF) certification but was shocked to see that I have only made 14 qualifying payments in the 4 years that I have been working at my [employer]. [My servicer’s] justification is that the extra money that I paid on top of what was due, automatically was put towards the next month, disqualifying ALL of those payments from PSLF... I find it outrageous and disheartening that by default, overpaying your bill each month would result in “Paid Ahead” disqualifying payments from the PSLF program, unless I had taken additional steps to personally request that the money not be put towards the following month. I feel like the last 3 years of my payments have been wasted, and my [employer-based loan repayment assistance] program actually extended my PSLF months. This results in 3 years of additional payments, which is real money.³⁰

When evaluating whether a payment qualifies under PSLF, there is a great deal of uncertainty – servicers may follow guidance established by the Department of Education, or they may establish their own policies and procedures to govern these situations. Because neither federal guidance to servicers nor servicers’ internal procedures are publicly available, borrowers lack the information necessary to make decisions regarding how to structure their loan payments and hold companies accountable when breakdowns occur. Revealing the number of borrowers derailed by paid ahead status and any government guidance to servicers on the qualifying status of nonstandard payments offers an opportunity to expose the root causes of key problems in the lifecycle of a borrower pursuing PSLF.

²⁹ When a borrower chooses this option, the loan status is referred to as “paid ahead” since the student loan borrower effectively cycles ahead the loan’s due date to the next month by paying more than is owed in the current month.

³⁰ *Staying on track*, *supra* note 2 at 42.

Part Four: the Right Type of Employer

In order for a payment to be considered qualified, in addition to meeting three criteria previously discussed, the payment must be made while the borrower is employed by the “right type of employer.”³¹ More than a decade after Congress created the PSLF program, ED has approved more than one million Employer Certification Forms from borrowers certifying intent to pursue PSLF. But in this time, ED has yet to provide guidance that is binding, public, and comprehensive for determining whether an organization qualifies under PSLF.³² Borrower complaints and private litigation about the employer certification process reveal breakdowns that can cost borrowers months or years in lost progress toward PSLF or knock them off track entirely³³—some borrowers report receiving an approved Employment Certification one year and having their same employer denied the next.

In fact, recent litigation suggests that even when ED’s contracted servicer determines an individual employer to be qualified and a borrower relies on this approval, ED may retroactively revoke the approval months or years later.³⁴ Because little is known about the process for this type of review and retroactive disqualification, borrowers are unable to proactively take steps to protect themselves.

By demanding documents from ED related to communications with borrowers about the right type of employer, including servicers’ handling of Employer Certification Forms and internal ED processes for determining eligibility, this investigation will expose:

³¹ Federal law defines the type of public service organization that qualifies under PSLF—a federal, state, local, or tribal government, a 501(c)(3) not-for-profit organization, or another type of not-for-profit organization if the primary purpose is to provide certain types of qualifying public services. See U.S. Dept. of Education, Office of Federal Student Aid, *Public Service Loan Forgiveness* (accessed Dec. 17, 2018), <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#qualifying-employment>.

³² Each year, the Department of Education releases a limited amount of aggregate data and other information about the number and status of Employer Certification Forms. This information does not offer the public any insight into the specific organizations approved, the process for making determinations about eligibility, or the oversight of servicer decision-making regarding approvals. See, e.g., U.S. Dept. of Education, *Public Service Loan Forgiveness (PSLF) and Temporary Expanded PSLF (TEPSLF)* (Dec. 2018), <https://fsaconferences.ed.gov/conferences/library/2018/2018FSAConfSession22.ppt>.

³³ See, e.g., *Am. Bar Ass’n v. Dep’t of Educ.*, 1:16-cv-02476 (D.D.C. Dec. 20, 2016), https://www.americanbar.org/content/dam/aba/images/abanews/PSLF_filing_122016.pdf (where the AVA sued the Department of Education over retroactive denials of qualified payments to lawyers under the Public Service Loan Forgiveness program); *Staying on track*, *supra* note 2.

³⁴ See *Am. Bar Ass’n v. Dep’t of Educ.*, 1:16-cv-02476 (D.D.C. Dec. 20, 2016).

What ED Tells Industry

- 1 What ED requires federal student loan servicers to tell borrowers about the right type of employer requirements under PSLF;
- 2 How ED requires federal student loan servicers to process Employer Certification Forms, including how any negative determinations and options for appeal are identified and communicated back to the borrower;

What Industry Tells Borrowers

- 3 What servicers tell borrowers about an employer's eligibility under PSLF;
- 4 What internal policies and procedures servicers follow to ensure employment determinations are accurate;
- 5 What internal policies and procedures servicers follow when a borrower completes an Employer Certification Form;

How ED Enforces Guidance

- 6 How ED enforces these requirements and monitors for compliance with any guidance to servicers about the right type of employer;

How Borrowers are Faring

- 7 Whether ED maintains a complete list of all employers approved under PSLF, and which employers are on this list; and
- 8 The scope of the breakdowns affecting borrowers who try to pursue the right type of employment, including data identifying the number of borrowers were denied PSLF due to ineligible employment after previously submitting an Employer Certification Form that was approved by ED's contracted student loan servicer.

Example: How ED has failed to provide a comprehensive guide to qualifying employment

The most recent GAO report on PSLF identified ED's failure to provide "the PSLF servicer and borrowers with a definitive source of information for determining which employers qualify a borrower for forgiveness."³⁵ Without a comprehensive employer list, borrowers will continue to receive unreliable information from servicers regarding their employment eligibility. GAO stated that this would make "it difficult for the servicer to determine whether certain employers qualify and for borrowers to make informed employment decisions." Borrowers report similar experiences when submitting Employer Certification Form—noting that employment that should be eligible based on ED's definition of public service is still denied. For example:

*Employment recertification is PAINFUL every year. I am in the military on [redacted] but every single year my recertification is denied, rejected, or needs to be re-submitted for one reason or another. please help servicemembers receive better support!*³⁶

Ultimately, borrowers suffer from ED's failure to make public such a list of eligible employers. Responsive documents to a direct request to ED for all PSLF-approved employers will show which borrowers miss out on PSLF eligibility and which instances employers are incorrectly determined to be unqualified.

³⁵ GAO, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers* (Sep. 5, 2018), <https://www.gao.gov/products/GAO-18-547>.

³⁶ Consumer complaint, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2424850>.

Part Five: Investigating a Decade of Mismanagement and Inadequate Oversight

In addition to the four specific factors discussed in detail above, our investigation is also pursuing new information about the behind-the-scenes decision-making process at ED in the decade since Congress first authorized PSLF. This includes an effort to uncover new information about ED's relationship with Affiliated Computer Services (ACS),³⁷ which operated as "the Direct Loan Servicing Center"—the first servicer for the Direct Loan program and the company tasked by ED with servicing all Direct Loan borrowers during the first years of PSLF.³⁸ Our investigation will also examine internal communications within ED as it was the target of and responded to a series of audits, reviews, and investigations by the Government Accountability Office and the ED Inspector General related to mismanagement of IDR and PSLF.³⁹ Lastly, the investigation includes an effort to uncover information about the federal government's reaction to litigation brought against ED related to the process for approving and revoking approval of qualified employers, including its communications with Congress and the press.⁴⁰

³⁷ In 2010, Xerox purchased ACS in 2010, and then spun off its loan servicing portfolio, among other things, in 2017 under the name Conduent. See CRN, *Conduent Closes 80 Sites, Looks To Exit Non-Core Businesses In Push To Cut Costs By \$700M* (Aug. 9, 2017), <https://www.crn.com/news/channel-programs/300090266/conduent-closes-80-sites-looks-to-exit-non-core-businesses-in-push-to-cut-costs-by-700m.htm>.

³⁸ In December 2013, ACS Education Services stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's poor servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers, including breakdowns that impacting the ability to get enrolled into PSLF. It has come to light that servicers documented the range of these breakdowns. See *Staying on track*, *supra* note 2 at 33. Uncovering these documents will show the true scope of borrowers who lost years of repayment toward PSLF and cost borrowers thousands of dollars in excess payments can come to light.

³⁹ In June 2017, the CFPB released a report on the problems that student loan borrowers face, highlighting borrower complaints around IDR and PSLF. See *Staying on track*, *supra* note 2. In September 2018, GAO released a report detailing ED's failures in overseeing the PSLF program. See GAO *supra* note 35. In September 2018, several media outlets reported on new ED data showing that over 99 percent of borrowers who applied for PSLF were denied. See, e.g., NPR *supra* note 5. In January 2018, the ED OIG issued a report assessing the costs and problems associated with IDR and loan forgiveness. The OIG stated, "Department policy requires that you develop a final corrective action plan within 30 days of the issuance of this report." U.S. Dept. of Education, Office of the Inspector General, *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs* (Jan. 31, 2018), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf>. While ED officials declined to comment, their internal communications about the data can be informative. ED officials likely discussed the report internally or with ED's contractors.

⁴⁰ In December 2016, the American Bar Association (ABA) sued ED on behalf of members who were retroactively denied qualified payments after ED altered its guidance to PHEAA for determining qualified employment. These borrowers previously had their employment certified as eligible under PSLF, only to see it retracted years later. With no indication that their employers were not eligible, these borrowers deserve to know how these mistakes were made, and what steps ED has taken to fix them for future borrowers. See *supra* note 33.

Conclusion

Taken together, the scope of the investigations outlined above will shed new light on a wide range of policy failures and industry practices that have a substantial financial cost to borrowers, tie these borrowers to their debts for months or years longer than expected, and shape these borrowers' lives and livelihoods for decades.

This investigation builds on the work of regulators, law enforcement officials, government watchdogs, and private litigants. Their efforts were critical to building our current understanding of what went wrong and who is responsible. In the months ahead, AFT and SBPC will uncover detailed new evidence of the breakdowns across the government and the student loan industry that have harmed millions of teachers, nurses, first responders, and other dedicated public service workers who simply sought to invoke their right to loan forgiveness guaranteed under federal law.

Appendix: FOIA and Public Record Requests

This appendix includes the specific individual Freedom of Information Act and state open records requests made by AFT and SBPC to support this investigation. In addition to these requests, we will compile a wide range of additional information, including court filings, investor disclosures, government reports, and consumer complaints, which will be compiled and made available to the public for the first time at protectborrowers.org.⁴¹

⁴¹ Documents will be made available at www.protectborrowers.org/investigations.

Appendix: FOIA and Public Record Requests

FOIA and State Open Records Requests

The Right Type of Loan	
FOIA Request to ED regarding FFELP Loans	25
Open Records Request to NJ HESAA regarding FFELP Loans	30
Open Records Request to NH HEAF regarding FFELP Loans	33
Open Records Request to UHEAA regarding FFELP Loans	36
Open Records Request to ISLC regarding FFELP Loans	39
Open Records Request to KHEAA regarding FFELP Loans	42
Open Records Request to PHEAA regarding FFELP Loans	45
Open Records Request to MOHELA regarding FFELP Loans	48
The Right Type of Repayment Plan	
FOIA Request to ED regarding IDR Plans	51
Open Records Request to PHEAA regarding IDR Plans	59
The Right Number of Qualifying Payments	
FOIA Request to ED regarding Qualifying Payments	65
Open Records Request to PHEAA regarding Qualifying Payments	72
The Right Type of Employer	
FOIA Request to ED regarding Qualifying Employment	78
Open Records Request to PHEAA regarding Qualifying Employment	83
Student Loan Account Management and Oversight	
FOIA Request to ED regarding ACS-serviced loans	87
Open Records Request to MOHELA regarding ACS-serviced loans	93
Open Records Request to PHEAA regarding ACS-serviced loans	97
Open Records Request to NH HEAF regarding ACS-serviced loans	101
Open Records Request to UHEAA regarding ACS-serviced loans	105
Open Records Request to OSLA regarding ACS-serviced loans	109
FOIA Request to ED regarding Communications between Servicers and FSA	113
Open Records Request to PHEAA regarding between Servicers and FSA	118
FOIA Request to ED regarding Communications about Oversight	122
Open Records Request to PHEAA regarding Communications about Oversight	127



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Request under the Freedom of Information Act

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance, communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF.



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In this response, please include all responsive documents related to written or oral communication with borrowers who:

1. Explicitly express intent to pursue in Public Service Loan Forgiveness; or
2. Inquire generally about benefits, protections, and/or loan forgiveness available to borrowers working in public service fields, including but not limited to benefits for teaching, providing healthcare, or serving in the military, but who do not request information about the "Public Service Loan Forgiveness Program" explicitly.

When responding, please produce all relevant documents generated between 2007 and 2018, identifying which documents are currently in effect.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a "reasonable search" as required by law you must use the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. 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



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own searches in order to make sure that documents are appropriately collected.

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 the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC 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’ys*, 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).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

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), SBPC and AFT request 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.



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

1. The FOIA specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.
2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
3. The disclosure will contribute to a greater understanding on the part of the public at large. SBPC and AFT seek this information to aid the public discourse surrounding issues of student loan servicing and PSLF. SBPC and AFT have the capacity to analyze documents provided and to disseminate its analysis to the public through their websites and other sources.
4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest—numerous media reports have highlighted the importance of the PSLF program and the impact of servicing breakdowns.

Disclosure of Information is Not in Commercial Interest of SBPC or AFT

This request is fundamentally non-commercial.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy to protect student loan borrowers’ rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (e.g., www.protectborrowers.org).

AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and



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political activism, and especially through the work our members do. Accordingly, SBPC and AFT qualify for a fee waiver.

* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

New Jersey Higher Education Student Assistance Authority
P.O. Box 545
Trenton, NJ 08625-0545

Re: Public Records Request

Dear Public Records Custodian:

Pursuant to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Because many of these FFEL lenders and servicers are quasi-government agencies, state open records or "sunshine" laws enable SBPC and AFT to request documents that expose how federal guidance was implemented, or, in the absence of federal guidance, how industry chose to implement practices related to PSLF.

Request under the New Jersey Open Public Records Act

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance,



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and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF. In this response, please include all responsive documents related to written or oral communication with borrowers who:

1. Explicitly express intent to pursue in Public Service Loan Forgiveness; or
2. Inquire generally about benefits, protections, and/or loan forgiveness available to borrowers working in public service fields, including but not limited to benefits for teaching, providing healthcare, or serving in the military, but who do not request information about the "Public Service Loan Forgiveness Program" explicitly.

When responding, please produce all relevant documents generated between 2007 and 2018, identifying which documents are currently in effect.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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.

Request for Waiver of Fees

In order to help to determine the status to assess fees, note that this request is made in affiliation with a public interest group and this request is not for commercial use. The



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maximum dollar amount SBPC and AFT are willing to pay for this request is \$25.

SBPC and AFT request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy to protect student loan borrowers' rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (www.protectborrowers.org).

AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

Accordingly, SBPC and AFT qualify for a fee waiver.

* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
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Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

New Hampshire Higher Education Assistance Foundation
4 Barrell Court
Concord, NH 03301

Re: Public Records Request

Dear Right to Know Custodian:

Pursuant to the New Hampshire Right to Know Law R.S.A. Ch. 91-A et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Because many of these FFEL lenders and servicers are quasi-government agencies, state open records or "sunshine" laws enable SBPC and AFT to request documents that expose how federal guidance was implemented, or, in the absence of federal guidance, how industry chose to implement practices related to PSLF.

Request under the New Hampshire Right to Know Law

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance,



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and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF. In this response, please include all responsive documents related to written or oral communication with borrowers who:

1. Explicitly express intent to pursue in Public Service Loan Forgiveness; or
2. Inquire generally about benefits, protections, and/or loan forgiveness available to borrowers working in public service fields, including but not limited to benefits for teaching, providing healthcare, or serving in the military, but who do not request information about the "Public Service Loan Forgiveness Program" explicitly.

When responding, please produce all relevant documents generated between 2007 and 2018, identifying which documents are currently in effect.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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.

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maximum dollar amount SBPC and AFT are willing to pay for this request is \$25.

SBPC and AFT request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

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Accordingly, SBPC and AFT qualify for a fee waiver.

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SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Utah Higher Education Assistance Authority
P. O. Box 145110
Salt Lake City, UT 84114-5110

Re: Public Records Request

Dear Public Records Custodian:

Pursuant to the Utah Government Records Access and Management Act, §63-2-101 et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Because many of these FFEL lenders and servicers are quasi-government agencies, state open records or "sunshine" laws enable SBPC and AFT to request documents that expose how federal guidance was implemented, or, in the absence of federal guidance, how industry chose to implement practices related to PSLF.

Request under the Utah Government Records Access and Management Act

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance,



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and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF. In this response, please include all responsive documents related to written or oral communication with borrowers who:

1. Explicitly express intent to pursue in Public Service Loan Forgiveness; or
2. Inquire generally about benefits, protections, and/or loan forgiveness available to borrowers working in public service fields, including but not limited to benefits for teaching, providing healthcare, or serving in the military, but who do not request information about the "Public Service Loan Forgiveness Program" explicitly.

When responding, please produce all relevant documents generated between 2007 and 2018, identifying which documents are currently in effect.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

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SBPC and AFT seek 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.

Request for Waiver of Fees

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Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Iowa College Student Aid Commission
Office of the Chief Information Officer
1305 E Walnut
Des Moines, IA 50319

Dear Open Records Custodian:

Pursuant to the Iowa Open Records Law § 22.1 et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Because many of these FFEL lenders and servicers are quasi-government agencies, state open records or "sunshine" laws enable SBPC and AFT to request documents that expose how federal guidance was implemented, or, in the absence of federal guidance, how industry chose to implement practices related to PSLF.

Request under the Iowa Open Records Law

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance,



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and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF. In this response, please include all responsive documents related to written or oral communication with borrowers who:

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Request for Waiver of Fees

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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Kentucky Higher Education Assistance Authority
Attn: Mr. Miles F. Justice, Esq.
mjustice@kheaa.com
P.O. Box 798
Frankfort, KY 40602-0798

Re: Open Records Request

Dear Open Records Custodian:

Pursuant to Kentucky's Open Records Act, Kentucky Revised Statutes 61.870, et. seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Because many of these FFEL lenders and servicers are quasi-government agencies, state open records or "sunshine" laws enable SBPC and AFT to request documents that expose how federal guidance was implemented, or, in the absence of federal guidance, how industry chose to implement practices related to PSLF.

Request under the Kentucky Open Records Act

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance,



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and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF. In this response, please include all responsive documents related to written or oral communication with borrowers who:

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Request for Waiver of Fees

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Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hench, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

Because many of these FFEL lenders and servicers are quasi-government agencies, state open records or "sunshine" laws enable SBPC and AFT to request documents that expose how federal guidance was implemented, or, in the absence of federal guidance, how industry chose to implement practices related to PSLF.

Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request all documents, including Dear Colleague letters, formal guidance,



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and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to PSLF. In this response, please include all responsive documents related to written or oral communication with borrowers who:

1. Explicitly express intent to pursue in Public Service Loan Forgiveness; or
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Request for Waiver of Fees

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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Missouri Higher Education Loan Authority (MOHELA)
633 Spirit Drive
Chesterfield, MO 63005-1243

Re: Public Records Request

Dear Public Records Custodian:

Pursuant to Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Millions of borrowers working in public service owe old bank-based federal student loans made under the Federal Family Education Loan Program, known as FFELP loans, and must consolidate these loans into Direct Loans to be eligible for the Public Service Loan Forgiveness (PSLF) program. However, the compensation structure of the FFEL program provides FFEL lenders and servicers with a strong economic disincentive with regard to borrowers exercising their right to consolidate—once a borrower is advised of her right to consolidate to pursue PSLF and takes this action, the FFEL lender will lose future interest income from the borrower and the FFEL servicer will lose the borrower as a customer. It is critical to make publicly available the guidance and protocol that the Department of Education (ED) requires of FFEL servicers when borrowers reach out about benefits and protections related to public service employment, such as PSLF.

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Request under the Missouri Sunshine Law

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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

To be eligible for Public Service Loan Forgiveness, borrowers must be enrolled in "the right type of repayment plan." Qualifying repayment plans include any type of income-driven repayment (IDR) plan where a borrower's monthly payment amount is tied to his or her income, rather than loan balance. Borrower's must renew their enrollment in IDR plans each year in a process called "recertification."

Unfortunately for borrowers, the process of picking the right type of repayment plan, including every step of the process to enroll in and recertify an IDR plan, is littered with obstacles. Borrowers rely on information from servicers during this process, but complaints show that this information is often inaccurate. As a result, borrowers enroll in repayment plans that do not qualify for PSLF or spend months in forbearance awaiting their servicer to process the correct repayment plan application. As borrowers hit roadblock after roadblock, breakdowns in the IDR program enrollment and process quickly become PSLF breakdowns.



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Request under the Freedom of Information Act

SBPC and AFT request all documents, audits, reports, and communications concerning the Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, relating to the handling of borrower accounts enrolled in income-driven repayment plans and the handling of borrower applications to certify and recertify income and family size under income-driven repayment plans, including the issuance of reminder notices to these borrowers. Responses should include all relevant documents related to:

1. The implementation and administration of Income-Based Repayment
2. The implementation and administration of Pay As You Earn
3. The implementation and administration of Revised Pay As You Earn
4. Any relevant information about income-driven repayment plans as used by borrowers pursuing PSLF.

When compiling documents to respond to this request, please include all applicable contractual requirements, change requests, compliance reviews conducted by FSA personnel, independent reviews conducted by third-party auditors, and summaries of call monitoring reviews or other internal reviews conducted by FedLoan/PHEAA and provided to FSA related to its servicing of Direct Loans.

Please provide the following information about the utilization of Income-Driven Repayment by borrowers serviced by PHEAA/FedLoan:

- The number of unique borrowers and dollar volume enrolled in each income-driven repayment plan at the conclusion of the preceding quarter;
- The number of unique borrowers and dollar volume enrolled in each income-driven repayment plan at the conclusion of the preceding quarter and where a borrower's payment was based on a demonstration of partial financial hardship, where applicable;



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- The average and median number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to enroll in IDR for the first time (new enrollees); and
- The average number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to enroll in IDR for the first time (new enrollees) and provided Alternative Documentation of Income (ADOI).

Please provide the following information about the recertification of income and family size for borrowers pursuing an income-driven repayment who were serviced by PHEAA/Fed-Loan:

- The average number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to recertify income and family size under an IDR plan (recertifying borrowers);
- The average number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to recertify income and family size under an IDR plan (recertifying borrowers) and provided Alternative Documentation of Income (ADOI);
- The share of all borrowers making Partial Financial Hardship (PFH) payments under an income-driven repayment plan who did not timely recertify income and family size during the preceding quarter;
- The number of borrowers who were placed in forbearance (administrative, voluntary, or other) in the month following the expiration of their annual repayment period, and who timely recertified their income and family size;
- The number of borrowers who had their IDR payment amount extended pursuant to 34 C.F.R. §§ 685.209(a)(5)(viii)(A), (b)(3)(vi)(E), (c)(4)(viii)(A), 685.221(e)(8)(i), (ii) after the expiration of their annual repayment period, and who timely recertified their income and family size;



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- The average (unique borrower), median (unique borrower), and aggregate (portfolio-wide) amount of unpaid interest capitalized to borrowers' accounts for borrowers who did not timely recertify income and family size during the prior quarter;
- The number of borrowers with loans that were subject to a capitalization event after being placed in an administrative forbearance while awaiting a determination of their PSLF application; and
- The number of borrowers who have submitted ECFs and have been notified that they are in a non-qualifying repayment plan.

In addition, please include all communications between the following ED officials and any employee of the Pennsylvania Higher Education Assistance Agency related to the administration of PHEAA's contract to manage the Public Service Loan Forgiveness program and PHEAA's performance under this contract, including but not limited to the following current and former Education Department employees:

- Matthew Sessa
- Kathleen Smith
- Mark LaVia
- James Runcie
- Wayne Johnson
- James Manning
- Diane Auer Jones
- Josh Venable
- Nate Bailey
- Soo Kang

SBPC and AFT also request the records of any and all basic servicing solution trainings provided to FSA personnel, and records of all communication between servicer and FSA related to borrower disputes, including but not limited to all communication to "FSA Business Operations distribution list 35."

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.



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In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. 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.

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 the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” People for



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the American Way v. U.S. Department of Education, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC 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’ys*, 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).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

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), SBPC and AFT request 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 specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.



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2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
3. The disclosure will contribute to a greater understanding on the part of the public at large. SBPC and AFT seek this information to aid the public discourse surrounding issues of student loan servicing and PSLF. SBPC and AFT have the capacity to analyze documents provided and to disseminate its analysis to the public through their websites and other sources.
4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest—numerous media reports have highlighted the importance of the PSLF program and the impact of servicing breakdowns.

Disclosure of Information is Not in Commercial Interest of SBPC or AFT

This request is fundamentally non-commercial.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy to protect student loan borrowers’ rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (e.g., www.protectborrowers.org).

AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

Accordingly, SBPC and AFT qualify for a fee waiver.

* * *



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SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hench, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

To be eligible for Public Service Loan Forgiveness, borrowers must be enrolled in "the right type of repayment plan." Qualifying repayment plans include any type of income-driven repayment (IDR) plan where a borrower's monthly payment amount is tied to his or her income, rather than loan balance. Borrower's must renew their enrollment in IDR plans each year in a process called "recertification."

Unfortunately for borrowers, the process of picking the right type of repayment plan, including every step of the process to enroll in and recertify an IDR plan, is littered with obstacles. Borrowers rely on information from servicers during this process, but complaints show that this information is often inaccurate. As a result, borrowers enroll in repayment plans that do not qualify for PSLF or spend months in forbearance awaiting their servicer to process the correct repayment plan application. As borrowers hit roadblock after roadblock, breakdowns in the IDR program enrollment and process quickly become PSLF breakdowns.



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Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request all documents, audits, reports, and communications concerning the Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, relating to the handling of borrower accounts enrolled in income-driven repayment plans and the handling of borrower applications to certify and recertify income and family size under income-driven repayment plans, including the issuance of reminder notices to these borrowers. Responses should include all relevant documents related to:

1. The implementation and administration of Income-Based Repayment
2. The implementation and administration of Pay As You Earn
3. The implementation and administration of Revised Pay As You Earn
4. Any relevant information about income-driven repayment plans as used by borrowers pursuing PSLF.

When compiling documents to respond to this request, please include all applicable contractual requirements, change requests, compliance reviews conducted by FSA personnel, independent reviews conducted by third-party auditors, and summaries of call monitoring reviews or other internal reviews conducted by FedLoan/PHEAA and provided to FSA related to its servicing of Direct Loans.

Please provide the following information about the utilization of Income-Driven Repayment by borrowers serviced by PHEAA/FedLoan:

- The number of unique borrowers and dollar volume enrolled in each income-driven repayment plan at the conclusion of the preceding quarter;
- The number of unique borrowers and dollar volume enrolled in each income-driven repayment plan at the conclusion of the preceding quarter and where a borrower's payment was based on a demonstration of partial financial hardship, where applicable;



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- The average and median number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to enroll in IDR for the first time (new enrollees); and
- The average number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to enroll in IDR for the first time (new enrollees) and provided Alternative Documentation of Income (ADOI).

Please provide the following information about the recertification of income and family size for borrowers pursuing an income-driven repayment who were serviced by PHEAA/Fed-Loan:

- The average number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to recertify income and family size under an IDR plan (recertifying borrowers);
- The average number of days it took FedLoan Servicing to process an income-driven repayment enrollment application during the preceding quarter, where the borrower sought to recertify income and family size under an IDR plan (recertifying borrowers) and provided Alternative Documentation of Income (ADOI);
- The share of all borrowers making Partial Financial Hardship (PFH) payments under an income-driven repayment plan who did not timely recertify income and family size during the preceding quarter;
- The number of borrowers who were placed in forbearance (administrative, voluntary, or other) in the month following the expiration of their annual repayment period, and who timely recertified their income and family size;
- The number of borrowers who had their IDR payment amount extended pursuant to 34 C.F.R. §§ 685.209(a)(5)(viii)(A), (b)(3)(vi)(E), (c)(4)(viii)(A), 685.221(e)(8)(i), (ii) after the expiration of their annual repayment period, and who timely recertified their income and family size;



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- The average (unique borrower), median (unique borrower), and aggregate (portfolio-wide) amount of unpaid interest capitalized to borrowers' accounts for borrowers who did not timely recertify income and family size during the prior quarter;
- The number of borrowers with loans that were subject to a capitalization event after being placed in an administrative forbearance while awaiting a determination of their PSLF application; and
- The number of borrowers who have submitted ECFs and have been notified that they are in a non-qualifying repayment plan.

In addition, please include all communications between the following ED officials and any employee of the Pennsylvania Higher Education Assistance Agency related to the administration of PHEAA's contract to manage the Public Service Loan Forgiveness program and PHEAA's performance under this contract, including but not limited to the following current and former Education Department employees:

- Matthew Sessa
- Kathleen Smith
- Mark LaVia
- James Runcie
- Wayne Johnson
- James Manning
- Diane Auer Jones
- Josh Venable
- Nate Bailey
- Soo Kang

Finally, SBPC and AFT request:

- A list of all customer service training certification courses offered by servicer
- Records of any and all basic servicing solution trainings provided to FSA personnel
- Records of all communication between servicer and FSA related to borrower dis-



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putes, including but not limited to all communication to "FSA Business Operations distribution list 35"

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC and AFT seek 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.

Request for Waiver of Fees

In order to help to determine my status to assess fees, you should know that I am affiliated with a public interest group and this request is not for commercial use. The maximum dollar amount I am willing to pay for this request is \$25.

I request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy



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to protect student loan borrowers' rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (www.protectborrowers.org).

AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

Accordingly, SBPC and AFT qualify for a fee waiver.

* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
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Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

For borrowers with the right type of loan that is enrolled in the right type of repayment plan, qualifying for PSLF requires ten years (120 months) of monthly "qualifying payments." Qualifying payments are payments made on time and equal to a pre-determined, "qualified" payment amount—an often opaque standard that has resulted a wide range of problems for borrowers. There are many instances where a borrower may make a payment that is greater than their qualified payment amount—for example, an unscheduled extra payment, an overpayment, multiple partial payments, or some other type of nonstandard payment, in an attempt to make progress on their student loans. These nonstandard payments can cause borrowers problems because they may not be considered as qualifying—even when the amount paid equals or exceeds the amount due on a borrower's bill. These problems can snowball over time and, as a result, borrowers spend thousands of dollars making months or years of payments that do not count toward loan forgiveness. Further exacerbating the problem, when borrowers encounter the type of IDR processing delays described in the preceding section, they may be advised by their student loan servicer to take a break from making payments



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entirely, known as a forbearance. Months spent in forbearance do not provide credit toward PSLF.

Request under the Freedom of Information Act

SBPC and AFT request all documents, audits, reports, and communications concerning the Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, and relating to the counting of “qualified payments” by borrowers enrolled in any income-driven repayment plan, including, but not limited to borrowers who have signaled their intent to pursue PSLF by completing an Employer Certification Form (ECF).

Responses should include all relevant documents related to:

1. The implementation and administration of Income-Based Repayment
2. The implementation and administration of Pay As You Earn
3. The implementation and administration of Revised Pay As You Earn
4. Any relevant information about income-driven repayment plans as used by borrowers pursuing PSLF.

SBPC and AFT also request all documents, audits, reports, and communications concerning the Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, and relating to handling of “partial payments” made by borrowers enrolled in any income-driven repayment plan or the handling of payments made by borrowers in “paid ahead status.” This should include, but need not be limited to borrowers who have signaled their intent to pursue PSLF by completing an Employer Certification Form (ECF).

When compiling documents to respond to this request, please include all applicable contractual requirements, all compliance reviews conducted by FSA personnel, all independent reviews conducted by third-party auditors, and all summaries of call monitoring reviews or other internal reviews conducted by FedLoan/PHEAA and provided to FSA related to its servicing of Direct Loans.



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Further, please specifically identify relevant documents produced prior to the introduction of the Employer Certification Form in 2012, any relevant documents produced between 2012 and 2016, and any relevant documents produced since January 1, 2017.

1. Total number of unique borrowers who have an approved ECF on file covering the prior 12 calendar months;
2. The number of unique borrowers identified in #1 who have made fewer than 12 qualified payments during this period;
3. The number of borrowers who have made fewer than 12 qualified payments during this period and who have made fewer than 12 total payments over this period;
4. The number of borrowers who have made fewer than 12 qualified payments during this period and who have had one or more loans in “paid ahead” status over this period; and
5. The number of borrowers who have received credit for qualifying payments after being billed more than \$0.05 below their correct monthly payment amount.

Finally, SBPC and AFT request:

1. All documents, communications, and records detailing the process by which borrowers can dispute their account records to FSA through their servicer (sometimes referred to as the “waiver process”);
2. A list of all nonstandard situations that required the use of the waiver process;
3. The number of borrower account disputes PHEAA submits quarterly to FSA;
4. The number of waivers approved quarterly by FSA, and the number of waivers denied quarterly by FSA, including explanations why waivers were approved or denied.
5. All guidance from ED or FSA to PHEAA and other servicers explaining how servicers should inform borrowers about the process that allows them to appeal servicer determinations and directly request that FSA review their accounts;



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6. The number of borrowers who have used this appeal process through FSA by quarter.
7. The number of borrowers who have appealed their qualifying payment count, and what were the outcomes of these appeals.
8. The number of PSLF forgiveness transactions that have been reversed, and the reasons for reversal.
9. Data related to monthly reports of all borrowers who are pursuing PSLF and:
 - a. have received a Segal AmeriCorps Education Award;
 - b. have received a Peace Corps transition payment; or
 - c. DOD Student Loan Repayment Program payment.
10. How many qualifying payments have been made pursuant to the above-listed programs, separated by program

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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,



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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, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. 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.

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 the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC 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’ys*, 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).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.



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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), SBPC and AFT request 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 specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.
2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
3. The disclosure will contribute to a greater understanding on the part of the public at large. SBPC and AFT seek this information to aid the public discourse surrounding issues of student loan servicing and PSLF. SBPC and AFT have the capacity to analyze documents provided and to disseminate its analysis to the public through their websites and other sources.
4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest—numerous media reports have highlighted the importance of the PSLF program and the impact of servicing breakdowns.

Disclosure of Information is Not in Commercial Interest of SBPC or AFT

This request is fundamentally non-commercial.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy to protect student loan borrowers’ rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums.



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* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hensch, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

For borrowers with the right type of loan that is enrolled in the right type of repayment plan, qualifying for PSLF requires ten years (120 months) of monthly "qualifying payments." Qualifying payments are payments made on time and equal to a pre-determined, "qualified" payment amount—an often opaque standard that has resulted a wide range of problems for borrowers. There are many instances where a borrower may make a payment that is greater than their qualified payment amount—for example, an unscheduled extra payment, an overpayment, multiple partial payments, or some other type of nonstandard payment, in an attempt to make progress on their student loans. These nonstandard payments can cause borrowers problems because they may not be considered as qualifying—even when the amount paid equals or exceeds the amount due on a borrower's bill. These problems can snowball over time and, as a result, borrowers spend thousands of dollars making months or years of payments that do not count toward loan forgiveness. Further exacerbating the problem, when borrowers encounter the type of IDR processing delays described in the preceding section, they may be advised by their student loan servicer to take a break from making payments entirely, known as a forbear-



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ance. Months spent in forbearance do not provide credit toward PSLF.

Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request all documents, audits, reports, and communications concerning the Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, and relating to the counting of “qualified payments” by borrowers enrolled in any income-driven repayment plan, including, but not limited to borrowers who have signaled their intent to pursue PSLF by completing an Employer Certification Form (ECF). Responses should include all relevant documents related to:

1. The implementation and administration of Income-Based Repayment
2. The implementation and administration of Pay As You Earn
3. The implementation and administration of Revised Pay As You Earn
4. Any relevant information about income-driven repayment plans as used by borrowers pursuing PSLF.

SBPC and AFT also request all documents, audits, reports, and communications concerning the Pennsylvania Higher Education Assistance Agency (PHEAA), also known as FedLoan Servicing, and relating to handling of “partial payments” made by borrowers enrolled in any income-driven repayment plan or the handling of payments made by borrowers in “paid ahead status.” This should include, but need not be limited to borrowers who have signaled their intent to pursue PSLF by completing an Employer Certification Form (ECF).

When compiling documents to respond to this request, please include all applicable contractual requirements, all compliance reviews conducted by FSA personnel, all independent reviews conducted by third-party auditors, and all summaries of call monitoring reviews or other internal reviews conducted by FedLoan/PHEAA and provided to FSA related to its servicing of Direct Loans.

Further, please specifically identify relevant documents produced prior to the introduc-



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tion of the Employer Certification Form in 2012, any relevant documents produced between 2012 and 2016, and any relevant documents produced since January 1, 2017.

1. Total number of unique borrowers who have an approved ECF on file covering the prior 12 calendar months;
2. The number of unique borrowers identified in #1 who have made fewer than 12 qualified payments during this period;
3. The number of borrowers who have made fewer than 12 qualified payments during this period and who have made fewer than 12 total payments over this period;
4. The number of borrowers who have made fewer than 12 qualified payments during this period and who have had one or more loans in “paid ahead” status over this period; and
5. The number of borrowers who have received credit for qualifying payments after being billed more than \$0.05 below their correct monthly payment amount.

Finally, SBPC and AFT request:

1. All documents, communications, and records detailing the process by which borrowers can dispute their account records to FSA through their servicer (sometimes referred to as the “waiver process”);
2. A list of all nonstandard situations that required the use of the waiver process;
3. The number of borrower account disputes PHEAA submits quarterly to FSA;
4. The number of waivers approved quarterly by FSA, and the number of waivers denied quarterly by FSA, including explanations why waivers were approved or denied.
5. All guidance from ED or FSA to PHEAA and other servicers explaining how servicers should inform borrowers about the process that allows them to appeal servicer determinations and directly request that FSA review their accounts;



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6. The number of borrowers who have used this appeal process through FSA by quarter.
7. The number of borrowers who have appealed their qualifying payment count, and what were the outcomes of these appeals.
8. The number of PSLF forgiveness transactions that have been reversed, and the reasons for reversal.
9. Data related to monthly reports of all borrowers who are pursuing PSLF and:
 - a. have received a Segal AmeriCorps Education Award;
 - b. have received a Peace Corps transition payment; or
 - c. DOD Student Loan Repayment Program payment.
10. How many qualifying payments have been made pursuant to the above-listed programs, separated by program

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC and AFT seek 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



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any meetings, telephone conversations, or discussions. Our request includes any attachment to these records.

Request for Waiver of Fees

In order to help to determine my status to assess fees, you should know that I am affiliated with a public interest group and this request is not for commercial use. The maximum dollar amount I am willing to pay for this request is \$25.

I request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy to protect student loan borrowers' rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (www.protectborrowers.org).

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Accordingly, SBPC and AFT qualify for a fee waiver.

* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Inves-



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tigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
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Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

In order for a payment to be considered qualified, in addition to meeting three criteria previously discussed, the payment must be made while the borrower is employed by the "right type of employer". More than a decade after Congress created the PSLF program, ED has approved more than one million Employer Certification Forms from borrowers certifying intent to pursue PSLF. But in this time, ED has yet to provide guidance that is binding, public, and comprehensive for determining whether an organization qualifies under PSLF. Borrower complaints and private litigation about the employer certification process reveal breakdowns that can cost borrowers months or years in lost progress toward PSLF or knock them off track entirely—some borrowers report receiving an approved Employment Certification one year and having their same employer denied the next.

Request under the Freedom of Information Act

SBPC and AFT request:

- A state-by-state list of approved employers under PSLF.



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- A list of approved employers categorized by type of “qualifying employment” i.e. level of government, 501(c)(3) not-for-profit, other type of not-for-profit.
- A list of employers that borrowers submitted in ECFs that ED has determined do not qualify borrowers for PSLF.
- All communications determining whether specific employers qualify or not under PSLF.
- All documents, communications, and final determinations shared between PHEAA officials about any policies surrounding retroactive denials of qualified payments following a borrower’s approved ECF, dating back to 2012.
- Data on how many borrowers have disputed determinations of their ECFs and the outcomes of those disputes.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available, in addition to searches by



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individual custodians likely to have responsive information. 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.

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 the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you "demonstrate the validity of [each] exemption that [the Department] asserts." *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC 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'ys*, 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).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

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), SBPC and AFT request 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.



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

1. The FOIA specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.
2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
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* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

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Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hensch, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

In order for a payment to be considered qualified, in addition to meeting three criteria previously discussed, the payment must be made while the borrower is employed by the "right type of employer". More than a decade after Congress created the PSLF program, ED has approved more than one million Employer Certification Forms from borrowers certifying intent to pursue PSLF. But in this time, ED has yet to provide guidance that is binding, public, and comprehensive for determining whether an organization qualifies under PSLF. Borrower complaints and private litigation about the employer certification process reveal breakdowns that can cost borrowers months or years in lost progress toward PSLF or knock them off track entirely—some borrowers report receiving an approved Employment Certification one year and having their same employer denied the next.



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Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request:

- A state-by-state list of approved employers under PSLF.
- A list of approved employers categorized by type of “qualifying employment” i.e. level of government, 501(c)(3) not-for-profit, other type of not-for-profit.
- A list of employers that borrowers submitted in ECFs that ED has determined do not qualify borrowers for PSLF.
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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Existing records repeatedly show servicers' failure to properly transfer relevant information about borrower accounts to a new servicer during a servicing transfer (also known as a system conversion). Servicing transfer errors lead to confusion for borrowers, especially if the previous servicer had different policies and procedures for account management or made significant administrative errors that lead to late payments and lost benefits. In December 2013, ACS Education Services, also known as the Direct Loan Servicing Center, stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers. In some cases, these problems led to lost years of credit toward Public Service Loan Forgiveness (PSLF) and cost borrowers thousands of dollars in excess payments.



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Request under the Freedom of Information Act

SBPC and AFT request all documents, audits, reports, and communications relating to account errors affecting borrowers with Direct Loans serviced by ACS Educational Services, also known as the Direct Loan Servicing Center, between 2007 and 2013. This should include all documents, audits, reports, and communications to and from ED, servicers, and/or Congress on the following topics:

1. Errors stemming from the 2013 transfer of Direct Loans from ACS to other servicing contractors hired by the Department of Education;
2. Errors resulting from improper handling of borrower accounts by ACS servicing personnel at any time between 2007 and 2013;
3. Errors resulting from processing breakdowns in information systems, including servicing and accounting systems used by ACS to service Direct Loans at any time between 2007 and 2013;
4. Errors that led to inaccurate recording of account balances, payment histories, interest charges, or other account records at any time between 2007 and 2013; and
5. Errors that resulted in inaccurate information about individual loans recorded in the National Student Loan Data System (NSLDS) at any time between 2007 and 2013.

In your response, please include any audits, reviews, or analysis performed by the Department of Education (ED) or Federal Student Aid (FSA) personnel, as well as any audits, reviews or analysis performed by third-party auditors or other vendors, including other student loan servicers receiving transferred loans from ACS. This response should include audits, reviews, or analysis performed at the request of FSA personnel, Congress, or ACS management.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.



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In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. 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.

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 the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you



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may provide SBPC 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’ys*, 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).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

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), SBPC and AFT request 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 specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.



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2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
3. The disclosure will contribute to a greater understanding on the part of the public at large. SBPC and AFT seek this information to aid the public discourse surrounding issues of student loan servicing and PSLF. SBPC and AFT have the capacity to analyze documents provided and to disseminate its analysis to the public through their websites and other sources.
4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest—numerous media reports have highlighted the importance of the PSLF program and the impact of servicing breakdowns.

Disclosure of Information is Not in Commercial Interest of SBPC or AFT

This request is fundamentally non-commercial.

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* * *



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SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Missouri Higher Education Loan Authority (MOHELA)
633 Spirit Drive
Chesterfield, MO 63005-1243

Re: Public Records Request

Dear Public Records Custodian:

Pursuant to Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Existing records repeatedly show servicers' failure to properly transfer relevant information about borrower accounts to a new servicer during a servicing transfer (also known as a system conversion). Servicing transfer errors lead to confusion for borrowers, especially if the previous servicer had different policies and procedures for account management or made significant administrative errors that lead to late payments and lost benefits. In December 2013, ACS Education Services, also known as the Direct Loan Servicing Center, stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's shoddy servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers. In some cases, these problems led to lost years of credit toward Public Service Loan Forgiveness (PSLF) and cost borrowers thousands of dollars in excess payments.



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Request under the Missouri Sunshine Law

SBPC and AFT request the following communication:

1. All communication between your organization and ACS regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.
2. All communication between your organization and the Department of Education (ED)/Federal Student Aid (FSA) regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.

In your response, please include any correspondence related to account errors affecting borrowers with Direct Loans serviced by ACS.

In addition, please include any internal policies or procedures that were established by your organization in order to address account errors stemming from a portfolio transfer, and all formal or informal guidance provided by the Department of Education to your organization on how to handle account errors stemming from portfolio transfers, including but not limited to accounts for borrowers pursuing PSLF. This response should include audits, reviews, or analysis performed at the request of FSA staff, ED personnel, and/or Congress.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC and AFT seek all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record,"



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“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.

Request for Waiver of Fees

In order to help to determine the status to assess fees, note that this request is made in affiliation with a public interest group and this request is not for commercial use. The maximum dollar amount SBPC and AFT are willing to pay for this request is \$25.

SBPC and AFT request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

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Accordingly, SBPC and AFT qualify for a fee waiver.

* * *



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SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hench, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Existing records repeatedly show servicers' failure to properly transfer relevant information about borrower accounts to a new servicer during a servicing transfer (also known as a system conversion). Servicing transfer errors lead to confusion for borrowers, especially if the previous servicer had different policies and procedures for account management or made significant administrative errors that lead to late payments and lost benefits. In December 2013, ACS Education Services, also known as the Direct Loan Servicing Center, stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's shoddy servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers. In some cases, these problems led to lost years of credit toward Public Service Loan Forgiveness (PSLF) and cost borrowers thousands of dollars in excess payments.



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Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request the following communication:

1. All communication between your organization and ACS regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.
2. All communication between your organization and the Department of Education (ED)/Federal Student Aid (FSA) regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.

In your response, please include any correspondence related to account errors affecting borrowers with Direct Loans serviced by ACS.

In addition, please include any internal policies or procedures that were established by your organization in order to address account errors stemming from a portfolio transfer, and all formal or informal guidance provided by the Department of Education to your organization on how to handle account errors stemming from portfolio transfers, including but not limited to accounts for borrowers pursuing PSLF. This response should include audits, reviews, or analysis performed at the request of FSA staff, ED personnel, and/or Congress.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC and AFT seek all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record,"



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“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.

Request for Waiver of Fees

In order to help to determine the status to assess fees, note that this request is made in affiliation with a public interest group and this request is not for commercial use. The maximum dollar amount SBPC and AFT are willing to pay for this request is \$25.

SBPC and AFT request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

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Accordingly, SBPC and AFT qualify for a fee waiver.

* * *



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Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

New Hampshire Higher Education Assistance Foundation
4 Barrell Court
Concord, NH 03301

Re: Public Records Request

Dear Right to Know Custodian:

Pursuant to the New Hampshire Right to Know Law R.S.A. Ch. 91-A et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Existing records repeatedly show servicers' failure to properly transfer relevant information about borrower accounts to a new servicer during a servicing transfer (also known as a system conversion). Servicing transfer errors lead to confusion for borrowers, especially if the previous servicer had different policies and procedures for account management or made significant administrative errors that lead to late payments and lost benefits. In December 2013, ACS Education Services, also known as the Direct Loan Servicing Center, stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's shoddy servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers. In some cases, these problems led to lost years of credit toward Public Service Loan Forgiveness (PSLF) and cost borrowers thousands of dollars in excess payments.



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Request under the New Hampshire Right to Know Law

SBPC and AFT request the following communication:

1. All communication between your organization and ACS regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.
2. All communication between your organization and the Department of Education (ED)/Federal Student Aid (FSA) regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.

In your response, please include any correspondence related to account errors affecting borrowers with Direct Loans serviced by ACS.

In addition, please include any internal policies or procedures that were established by your organization in order to address account errors stemming from a portfolio transfer, and all formal or informal guidance provided by the Department of Education to your organization on how to handle account errors stemming from portfolio transfers, including but not limited to accounts for borrowers pursuing PSLF. This response should include audits, reviews, or analysis performed at the request of FSA staff, ED personnel, and/or Congress.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC and AFT seek all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record,"



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Request for Waiver of Fees

In order to help to determine the status to assess fees, note that this request is made in affiliation with a public interest group and this request is not for commercial use. The maximum dollar amount SBPC and AFT are willing to pay for this request is \$25.

SBPC and AFT request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

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* * *



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Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Utah Higher Education Assistance Authority
P. O. Box 145110
Salt Lake City, UT 84114-5110

Re: Public Records Request

Dear Public Records Custodian:

Pursuant to the Utah Government Records Access and Management Act, §63-2-101 et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Existing records repeatedly show servicers' failure to properly transfer relevant information about borrower accounts to a new servicer during a servicing transfer (also known as a system conversion). Servicing transfer errors lead to confusion for borrowers, especially if the previous servicer had different policies and procedures for account management or made significant administrative errors that lead to late payments and lost benefits. In December 2013, ACS Education Services, also known as the Direct Loan Servicing Center, stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's shoddy servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers. In some cases, these problems led to lost years of credit toward Public Service Loan Forgiveness (PSLF) and cost borrowers thousands of dollars in excess payments.



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Request under the Utah Government Records Access and Management Act

SBPC and AFT request the following communication:

1. All communication between your organization and ACS regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.
2. All communication between your organization and the Department of Education (ED)/Federal Student Aid (FSA) regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.

In your response, please include any correspondence related to account errors affecting borrowers with Direct Loans serviced by ACS.

In addition, please include any internal policies or procedures that were established by your organization in order to address account errors stemming from a portfolio transfer, and all formal or informal guidance provided by the Department of Education to your organization on how to handle account errors stemming from portfolio transfers, including but not limited to accounts for borrowers pursuing PSLF. This response should include audits, reviews, or analysis performed at the request of FSA staff, ED personnel, and/or Congress.

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Request for Waiver of Fees

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Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Oklahoma Student Loan Authority
525 Central Park Drive, Suite 600
Oklahoma City, OK 73105

Re: Open Records Request

Dear Open Records Custodian:

Pursuant to the Oklahoma Open Records Act, 51 §24A.1 et seq., the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

Existing records repeatedly show servicers' failure to properly transfer relevant information about borrower accounts to a new servicer during a servicing transfer (also known as a system conversion). Servicing transfer errors lead to confusion for borrowers, especially if the previous servicer had different policies and procedures for account management or made significant administrative errors that lead to late payments and lost benefits. In December 2013, ACS Education Services, also known as the Direct Loan Servicing Center, stopped all servicing operations and transferred its Direct Loan portfolio to other servicers. This led to servicing transfers for millions of borrowers, and as a result of ACS's shoddy servicing practices, the new servicers uncovered a wide array of account problems that directly affected borrowers. In some cases, these problems led to lost years of credit toward Public Service Loan Forgiveness (PSLF) and cost borrowers thousands of dollars in excess payments.



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Request under the Oklahoma Open Records Act

SBPC and AFT request the following communication:

1. All communication between your organization and ACS regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.
2. All communication between your organization and the Department of Education (ED)/Federal Student Aid (FSA) regarding the transfer of Direct Loans from ACS, also known as the Direct Loan Servicing Center, to your organization.

In your response, please include any correspondence related to account errors affecting borrowers with Direct Loans serviced by ACS.

In addition, please include any internal policies or procedures that were established by your organization in order to address account errors stemming from a portfolio transfer, and all formal or informal guidance provided by the Department of Education to your organization on how to handle account errors stemming from portfolio transfers, including but not limited to accounts for borrowers pursuing PSLF. This response should include audits, reviews, or analysis performed at the request of FSA staff, ED personnel, and/or Congress.

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“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.

Request for Waiver of Fees

In order to help to determine the status to assess fees, note that this request is made in affiliation with a public interest group and this request is not for commercial use. The maximum dollar amount SBPC and AFT are willing to pay for this request is \$25.

SBPC and AFT request a waiver of all fees for this request. Disclosure of the requested information to SBPC and AFT is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, and is not primarily in my commercial interest.

SBPC is a project of Resources Legacy Fund (RLF). RLF is a 501(c)(3) nonprofit based in Sacramento, CA. SBPC engages in policy development, research, and litigation strategy to protect student loan borrowers’ rights and advance the economic opportunity of the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (www.protectborrowers.org).

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Accordingly, SBPC and AFT qualify for a fee waiver.

* * *



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SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

In June 2017, the CFPB released a report on the problems that student loan borrowers face, highlighting borrower complaints around IDR and PSLF. In September 2018, GAO released a report detailing ED's failures in overseeing the PSLF program. In September 2018, several media outlets reported on new ED data showing that over 99 percent of borrowers who applied for PSLF were denied. In January 2018, the ED OIG issued a report assessing the costs and problems associated with IDR and loan forgiveness. While ED officials declined to comment, their internal communications, and communications with their servicers can be informative.

Request under the Freedom of Information Act

SBPC and AFT request:

All communications or records of communications between the following Department of Education personnel and FSA career staff and James Preston, the former chief executive of PHEAA, Scott Miller, the Senior Vice President and Director of Federal Relations of PHEAA, and Matthew Sessa, the former Senior Vice President of PHEAA—discussing



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“Public Service Loan Forgiveness” or “PSLF”—from October 2007 through July 2018.

- Matthew Sessa
- Kathleen Smith
- Mark LaVia
- James Runcie
- Wayne Johnson
- James Manning
- Diane Auer Jones
- Josh Venable
- Nate Bailey

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

SBPC and AFT seek 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, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a “reasonable search” as required by law you must use the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. 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.



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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 the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC 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’ys*, 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).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

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), SBPC and AFT request 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.



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

1. The FOIA specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.
2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
3. The disclosure will contribute to a greater understanding on the part of the public at large. SBPC and AFT seek this information to aid the public discourse surrounding issues of student loan servicing and PSLF. SBPC and AFT have the capacity to analyze documents provided and to disseminate its analysis to the public through their websites and other sources.
4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest—numerous media reports have highlighted the importance of the PSLF program and the impact of servicing breakdowns.

Disclosure of Information is Not in Commercial Interest of SBPC or AFT

This request is fundamentally non-commercial.

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SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not granted, and any fees will be in excess of \$25, please contact Tariq immediately.

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Randi Weingarten
President
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Seth Frotman
Executive Director
Student Borrower Protection Center



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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hench, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

In June 2017, the CFPB released a report on the problems that student loan borrowers face, highlighting borrower complaints around IDR and PSLF. In September 2018, GAO released a report detailing ED's failures in overseeing the PSLF program. In September 2018, several media outlets reported on new ED data showing that over 99 percent of borrowers who applied for PSLF were denied. In January 2018, the ED OIG issued a report assessing the costs and problems associated with IDR and loan forgiveness. While PHEAA officials do not publicly comment, their internal communications, and communications with ED can be informative.

Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request:

All communications or records of communications between the following Department of Education personnel and FSA career staff and James Preston, the former chief exec-



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utive of PHEAA, Scott Miller, the Senior Vice President and Director of Federal Relations of PHEAA, and Matthew Sessa, the former Senior Vice President of PHEAA—discussing “Public Service Loan Forgiveness” or “PSLF”—from October 2007 through July 2018.

- Matthew Sessa
- Kathleen Smith
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- James Runcie
- Wayne Johnson
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- Diane Auer Jones
- Josh Venable
- Nate Bailey

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, and emails. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC and AFT seek 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.

Request for Waiver of Fees

In order to help to determine my status to assess fees, you should know that I am affiliated with a public interest group and this request is not for commercial use. The maximum dollar amount I am willing to pay for this request is \$25.



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* * *

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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education ("ED"), 34 C.F.R. Part 5, the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

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Request under the Freedom of Information Act

SBPC and AFT request:



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- All documents, communications, and records between ED officials from June 2017 and October 2017 that include any mention of the CFPB report on PSLF;
- All documents, communications, and records between ED officials and ED's servicing contractors that include any mention of the GAO report on PSLF released in September 2018. This request should extend to all communications through the date the request is filled;
- All documents, communications, and records between ED officials about the PSLF data released in September 2018. This request should extend to all communications through the date the request is filled;
- The final corrective action plan responsive to the OIG report from January 31, 2018; and
- All communications between ED officials that include any mention of the OIG report from January 31, 2018, between January 2018 through the date the request is filled.

SBPC and AFT do not object to the redaction from such records of any names or personally identifiable information of any individual.

In addition to the records requested above, SBPC and AFT also request records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, 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.

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To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC 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 either via email at tariq@protectborrowers.org or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

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), SBPC and AFT request a waiver of fees associated with the processing of this request because: (1) disclosure



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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 specifically relates to the operations or activities of the government. This request specifically seeks information regarding the activities of the government and its contractors in handling PSLF, and important policies and procedures relating to the program.
2. The requested documents will be likely to contribute to an understanding of those specific operations or activities. This request seeks documents that will contribute to the understanding of the circumstances in which student loan borrowers are adversely affected by the actions taken by student loan servicers.
3. The disclosure will contribute to a greater understanding on the part of the public at large. SBPC and AFT seek this information to aid the public discourse surrounding issues of student loan servicing and PSLF. SBPC and AFT have the capacity to analyze documents provided and to disseminate its analysis to the public through their websites and other sources.
4. Disclosure will “significantly” contribute to the public’s understanding of government activities. As noted above, the subject of this request is a matter of great public interest—numerous media reports have highlighted the importance of the PSLF program and the impact of servicing breakdowns.

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Student Borrower Protection Center
1015 15th St. NW, #600
Washington, DC 20005

December 19, 2018

Pennsylvania Higher Education Assistance Agency
Nathan Hench, Right to Know Official
1200 North Seventh Street, 6th Floor
Harrisburg, PA 17102-1444

Re: Public Records Request

Dear Right to Know Official:

Pursuant to the Pennsylvania Right-to-Know Act, Act 3 of 2008 (65 P.S. §67.101 et seq.), the Student Borrower Protection Center ("SBPC") and the American Federation of Teachers ("AFT") make the following requests for records.

Background

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Request under the Pennsylvania Right-to-Know Act

SBPC and AFT request:

- All documents, communications, and records between ED officials from June 2017 and October 2017 that include any mention of the CFPB report on PSLF;
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Accordingly, SBPC and AFT qualify for a fee waiver.

* * *

SBPC and AFT look forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact Tariq Habash, Head of Investigations at SBPC at tariq@protectborrowers.org or 513-649-4429. If the request for a fee waiver is not



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granted, and any fees will be in excess of \$25, please contact Tariq immediately.

Sincerely,

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

Seth Frotman
Executive Director
Student Borrower Protection Center