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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.
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.

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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,

A handwritten signature in black ink, appearing to read 'Randi Weingarten'.

Randi Weingarten
President
American Federation of Teachers, AFL-CIO

A handwritten signature in black ink, appearing to read 'Seth Frotman'.

Seth Frotman
Executive Director
Student Borrower Protection Center