

MEMORANDUM

October 29, 2021

TO: Interested Parties
FROM: Ben Kaufman, Head of Investigations & Senior Policy Advisor
Winston Berkman-Breen, Deputy Director of Advocacy & Policy Counsel
RE: **Considerations for the Department of Education’s Negotiated Rulemaking Committee Regarding the Public Service Loan Forgiveness Program**

Introduction

In August, the Department of Education (ED) announced its intention to convene a negotiated rulemaking committee that will “rewrite regulations for Public Service Loan forgiveness” (PSLF).¹ Passed into law on a bipartisan basis in 2007, PSLF was created to provide relief to public service workers with student loan debt in exchange for a decade of service in their communities or to our country.² Since its inception, however, PSLF has been undermined by industry malfeasance and incompetence by ED officials across successive presidential administrations. The program now has a 98 percent rejection rate³—and the expansion meant to fix it has its own 97 percent denial rate.⁴ This is not slated to improve. Internal projections from the company that ED contracts with to manage PSLF show that even by 2026, almost ten years after borrowers were meant to have begun becoming eligible for relief through the program, four of every five borrowers pursuing PSLF will still not have secured promised loan forgiveness through it.⁵ Underlying these statistics, millions of public service workers have been cheated out of their right to loan forgiveness guaranteed under federal law.

On October 6, 2021, during the first week of negotiations and drawing on its authority under the HEROES Act of 2003 and the ongoing COVID-19 pandemic, ED announced a limited-time waiver of certain of the PSLF requirements, namely that qualifying payments must be made on

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<https://www.ed.gov/news/press-releases/new-negotiated-rulemaking-committee-focus-student-loans-targeted-discharge-and-forgiveness-authorities>.

² 20 U.S.C. § 1001.

³ <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

⁴ Id.

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<https://protectborrowers.org/newly-uncovered-internal-projections-from-a-department-of-education-contractor-show-pslf-problems-will-persist-over-time/>.

Direct Loans and pursuant to certain payment plans.⁶ Under the waiver, ED announced that it will grant credit to borrowers with existing Direct Loans or who consolidated other loans into Direct Consolidation Loans for any period during which the borrower was in repayment, regardless of loan type. Although this waiver addresses some documented issues with the PSLF program and lowers several of the barriers to loan forgiveness for public service workers, it is both time-limited—the waiver expires after October 31, 2022—and leaves in place many unnecessary and exclusionary requirements. The waiver provisions must be codified in ED regulation and made permanent, and ED must address the remainder of the barriers to PSLF.

This memorandum proposes policy changes that ED can and should affect through rulemaking: revisions to ED-imposed limitations in existing rules; steps to hold borrowers harmless for well-documented industry abuses in implementing the current PSLF requirements; and changes to ED’s own policies and procedures for overseeing the loan forgiveness program.

Accordingly, while they are not exhaustive with regard to the wide breadth of badly needed changes to PSLF, the following key considerations should guide the negotiated rulemaking committee as it considers revisions to the regulations surrounding the program. Additionally, appended to this memorandum is a proposed amendment to the existing PSLF regulations, which builds on the Department’s own amendments proposed in Session 1 as part of the negotiated rulemaking process and incorporates the policy recommendations offered in this document.

1. ED’s Own Prior Rulemaking Unnecessarily and Harmfully Restricts Public Service Worker Borrowers’ Ability to Access Loan Forgiveness.

As we have written previously, many key aspects of qualification for PSLF—including several of those that have proven uniquely disastrous for borrowers pursuing loan relief under the program—were codified not in statute, but in the regulations that ED developed to implement the program.⁷

First, ED unnecessarily narrowed the scope of employment that qualifies for PSLF, both by focusing on borrowers’ employers rather than their public service function and by rigidly defining “full time” employment. Second, it unnecessarily restricted which payments qualify for PSLF, by dictating both a payment timeframe⁸ and by excluding certain payments, neither of which is required by statute.

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<https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-e-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness>.

⁷ <https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf#page=27>.

⁸ 34 C.F.R. § 685.219(c)(1)(iii).

Just as ED chose to create many of these barriers through prior rulemaking, it can and must now use the tools already at its disposal to eliminate them. For PSLF to accomplish Congress’s clear intent to provide a benefit to student loan borrowers working in public service, ED must revise the PSLF regulations to reflect the reality of what public service employment actually looks like today.

1.1. Borrowers, and in particular the lowest-paid public service workers, are being excluded from PSLF because the Department unnecessarily narrowed Congress’s definition of qualifying employment.

Under statute, borrowers must work in a “public service job” to qualify for PSLF.⁹ In the Higher Education Act (HEA), Congress defined “public service job” to include work in a broad swath of industries, ranging from emergency management to healthcare support occupations to school-based library sciences.¹⁰ In its regulations, however, the Department both substantially broadened and unnecessarily and harmfully narrowed this definition by shifting the emphasis on public service “jobs” to employment by a public service “organization,” essentially changing qualification for PSLF from concerning the type of work someone does to the type of employer they work for.¹¹

This subtle change has carried significant implications for borrowers working in permitted public service fields, but who do so as contractors or temporary workers for for-profit companies rather than as direct employees of an otherwise qualifying nonprofit organization or government agency. For example, there are many healthcare workers, such as home health care aides, eldercare workers, and nurses, whose jobs clearly fall within the spirit of PSLF and the letter of the statute, but who are not eligible for the program because they happen to be employees of a for-profit hospital system or healthcare company.¹² The implications of this distinction are largest for low-income workers, whose roles are increasingly outsourced.¹³ Further, the Department’s regulation is unfair to public service workers employed in states that prohibit health care practitioners at public or nonprofit hospitals and health care facilities from being employed directly by the hospital or health care facility, such as California and Texas.¹⁴

Public service workers who nevertheless find themselves technically employed by a for-profit company tend to be lower paid, and they are disproportionately workers of color.¹⁵ Research on

⁹ 20 USC § 1087e(m)(1)(B)(i).

¹⁰ 20 USC § 1087e(m)(3)(B)(i).

¹¹ Compare 20 USC § 1087e(m)(3)(B)(i) with 34 § CFR 685.219(b)-(c).

¹² <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Temping-Out-Federal-Government-6-19.pdf>.

¹³ <https://s27147.pcdn.co/wp-content/uploads/2015/02/Temped-Out.pdf>.

¹⁴

<https://www.cmadoes.org/newsroom/news/view/ArticleId/21851/Texas-Medical-Association-joins-CMA-to-urge-U-S-education-secretary-to-fix-public-service-loan-forgiveness-program>.

¹⁵ <https://www.marketplace.org/2019/01/17/rise-federal-contractors/>.

the demographics of America’s healthcare workforce shows vast racial and gender disparities across professions.¹⁶ Healthcare jobs, in particular, are heavily reliant on workforces that are disproportionately Black, Brown, and/or female.¹⁷ As a result, ED’s definition of qualifying employment for PSLF contributes to the growing racial wealth gap among student loan borrowers.

In the context of the COVID-19 pandemic, the inequity of this policy choice has been laid bare. Our nation’s public health workforce, including front-line caregivers working in hospitals, nursing homes, and in patients’ homes, has taken on the extraordinary burden of protecting vulnerable people at great personal risk, all while too often being denied the benefits promised under the law when their employer is not organized as a nonprofit.¹⁸

There is no statutory reason for this narrow focus on employer, nor does it reflect today’s realities of public service employment for many borrowers. The Department has the authority to revise its regulations to more accurately implement Congress’s intent that borrowers working in public service should receive loan forgiveness, and it can do so without punishing borrowers for their employer’s tax status. Doing so would simply amount to the Department recognizing that the economy and labor markets have evolved since the time of PSLF’s passage,¹⁹ and that the relevant regulations need to be updated so that the law’s intent may be instantiated in this changed world.

1.2. Borrowers who experience contingent employment and part-time public service workers are being blocked from PSLF by an unnecessary and harmful component of the Department’s definition of “full-time” work.

Although the Higher Education Act requires only “full-time”²⁰ employment in a qualifying public service job, the Department has chosen through rulemaking to prioritize employers’ classifications of their workers over those workers’ actual time spent engaged in public service.²¹

¹⁶ <https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/diversityushealthoccupations.pdf>.

¹⁷ Id.

¹⁸ See, e.g. <https://www.regulations.gov/comment/ED-2021-OUS-0082-1504> (“I am a Nurse in a Nursing Home. I do not qualify for the PSLFP because my employer is a for profit. I am still on the front lines with COVID; nursing homes were the hardest hit, with little supplies. I report for work every day, and yes I am quickly getting burnt out with staff shortages. I feel this loan forgiveness shouldn’t be only qualified for non-profit facilities because employees have no control over that. I work within where I live, where my family is. That shouldn’t limit me to the same forgiveness because I am unable to relocate to an underprivileged area and work non-profit. Everywhere is struggling right now with COVID, and my job is harder than ever because of it. The qualifications should be revamped for nursing homes nurses period. We are keeping the elderly population safe as best as we can, no matter who our employer is.”).

¹⁹ See, e.g.

<https://equitablegrowth.org/research-finds-the-domestic-outsourcing-of-jobs-leads-to-declining-u-s-job-quality-and-lower-wages/>.

²⁰ 20 USC § 1087e(m)(3)(B)(i).

²¹ 34 § CFR 685.219(b) (“Full-time” definition).

This excludes from PSLF many contract and contingent workers, who may practically work full-time but not be considered full-time employees or who may become part-time employees by no fault of their own (such as workers furloughed during the COVID-19 pandemic whose average hours across the year fall below full-time status)—even if they meet all other requirements. Although the HEA does not place any stipulations around the meaning of “full-time,”²² ED’s regulations set a floor for hours worked to be considered “full-time,” but allow employers to dictate a higher threshold:

“Full-time (1) means working in qualifying employment in one or more jobs for *the greater of-*

(i)

(A) An annual average of at least 30 hours per week, or

(B) For a contractual or employment period of at least 8 months, an average of 30 hours per week; or

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time.”²³

This definition, and the way it is incorporated into ED’s Employment Certification Form,²⁴ has the effect of letting employers bar public service workers’ access to loan forgiveness merely because the employer does not want to claim the worker as a “full-time employee,” regardless of the hours they work.²⁵ Instead, their employer will list these workers as being part-time employees. When that occurs, public service workers who work the same hours as a full-time employee—with the same employer or elsewhere—are barred from PSLF or must find an additional qualifying public service job to qualify under the regulation’s first prong, even if taking a second job effectively means the public service worker must balance two full-time qualifying jobs.

The experience of adjunct professors provides a salient example of the consequences ED’s rule has on contingent workers. Colleges and universities increasingly rely on these technically part-time teachers, with as much as 47 percent of instructional higher education faculty work now being done on a part-time contingent basis through adjuncts.²⁶ In practice, adjuncts often spend significantly more than 30 hours per week preparing coursework and meeting with students.²⁷ They are simply listed as part-time employees so that their employers can avoid the

²² 20 USC § 1087e(m)(3)(B)(i).

²³ 34 § CFR 685.219(b) (“Full-time” definition) (emphasis added).

²⁴ <https://studentaid.gov/sites/default/files/public-service-application-for-forgiveness.pdf>.

²⁵ <https://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>.

²⁶ https://www.aft.org/sites/default/files/adjuncts_qualityworklife2020.pdf.

²⁷ Id.

cost of providing them full employee benefits and rights.²⁸ Nevertheless, this classification keeps these otherwise qualifying public service workers from being eligible for PSLF. Adjuncts faced similar challenges with the Affordable Care Act's health insurance mandate for "full-time" workers, which the federal government resolved by applying a multiple to adjuncts' classroom hours to reflect the additional, uncompensated hours of work.²⁹

Framing public service work as "employment" and relying on employers to define non-traditional "full-time" arrangements creates an onerous process for otherwise qualified borrowers to obtain public service loan forgiveness, and is unnecessary under the PSLF statute. By definition, these are borrowers who may lack traditional job security or have unreliable long-term employment, which can exacerbate underlying economic insecurity caused by their student loans and underscores their need for loan forgiveness after their public service. ED can use the same rulemaking authority that it once used to exclude these workers from PSLF to usher them into eligibility for the program.

1.3. Borrowers are losing out on qualifying payments because of the Department's narrow regulations surrounding which payments count toward PSLF.

The Higher Education Act requires only that PSLF applicants make 120 payments on a Direct Loan in particular plans or amounts while in a qualifying job to secure forgiveness.³⁰ The law does not dictate specifics around the timing of those payments, whether they must be made in complete payments, or whether available "lump sum payments" that cover periods of more than one month can be counted as such toward PSLF.³¹ The Department, however, has chosen through rulemaking to allow student loan payments to count toward PSLF only if they are made within 15 days of the scheduled due date and cover the full scheduled installment amount, no more or less.³² In doing so, the Department set the stage for significant confusion and servicing errors that continue to bar eligible borrowers from their entitled loan forgiveness.³³

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https://www.washingtonpost.com/local/education/it-keeps-you-nice-and-disposable-the-plight-of-adjunct-professors/2019/02/14/6cd5cbe4-024d-11e9-b5df-5d3874f1ac36_story.html.

²⁹

<https://www.insidehighered.com/news/2014/02/11/irs-guidance-health-care-law-clarifies-formula-counting-adjunct-hours>.

³⁰ 20 USC § 1087e(m)(1)(A)-(B).

³¹ Id.

³² 34 § CFR 685.219(c)(iii).

³³ See, e.g., <https://www.regulations.gov/comment/ED-2021-OUS-0082-1201> ("I was working in washington state for the state in [mental] health and the first three years of my payments were disallowed because i rounded up my payments by pennies to make it an even amount. Because i "OVERPAID" they were not counted. Three years of payments gone. Meaning three extra years of payments till i could possibly qualify. How is that possible.").

Innumerable investigations of student loan servicers have revealed that these private companies misinform borrowers and mishandle, misallocate, and misapply payments.³⁴ For public service workers, those errors can prevent otherwise eligible payments from counting toward forgiveness within the narrow definition of eligibility that ED established. Additionally, when public service workers are able to put more toward their loans, these “paid ahead” or lump sum payments do not count toward their 120 qualifying payments, and they can instead cause successive months or years of student loan payments to be disqualified from counting toward PSLF. These disqualifications happen exclusively because the Department decided through the rulemaking process that they should.

Instead of focusing on whether PSLF-seeking borrowers have made the equivalent of 120 qualifying payments, the regulations currently unnecessarily narrow the set of payments that count toward loan relief, thereby restricting Congress’s intent in creating PSLF. Borrowers across the country are being harmed as a result. ED can and should reverse this by broadening these rules.

It is also worth noting that these timeliness requirements do not exist for borrowers experiencing financial hardship and pursuing loan forgiveness under Income-Driven Repayment (IDR).³⁵ Aligning rules about qualifying payments with standards for IDR payment counting will have the added benefit of significantly simplifying the servicing of both PSLF and IDR borrowers—eliminating much of the need for specialization among student loan servicers and mitigating the potential for future mismanagement and abuse.

1.4. Borrowers are losing out on qualifying payments because the Department unnecessarily narrowed which payment plans qualify for PSLF.

The Higher Education Act dictates that federal student loan payments can count toward PSLF only if they are made under an income-driven plan, a standard repayment plan, or certain other plans wherein monthly payment amounts are no less than what the borrower would owe under a standard repayment plan.³⁶ Under ED’s current implementation of PSLF, payments made via other repayment plans do not count for PSLF even where payments are equivalent to the amount owed under an income-driven plan.³⁷ This presents an administrative barrier to PSLF that has no public policy justification and simply serves to block access to PSLF.

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<https://www.consumerfinance.gov/aboutus/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stagerepayment/> [<https://perma.cc/DAP6-689Z>]; <https://dbo.ca.gov/2020/04/02/californiadepartment-of-business-oversight-sues-student-loan-servicer-pheaa-fedloan/> [<https://perma.cc/ZU33-T6XQ>]; <https://ag.ny.gov/press-release/2019/attorney-general-james-and-superintendent-vulloannounce-9-million-settlement> [<https://perma.cc/9U6U-TLXM>].

³⁵ See, e.g., 34 CFR 685.209.

³⁶ 20 USC § 1087e(m)(1)(A).

³⁷ <https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf> at 33.

In particular, regulations that ED promulgated unnecessarily bar payments of any amount made under the “alternative” payment plan from counting toward PSLF,³⁸ a rule that blocks as many as 1.4 million people from making qualifying payments for the purposes of the program.³⁹ ED’s choice to exclude the alternative payment plan from counting for PSLF is particularly damaging given that this plan is the default option for certain borrowers enrolled in income-driven repayment who fail to timely recertify income under this plan. A growing body of evidence shows that this outcome happens due to servicer error that is entirely out of borrowers’ control.⁴⁰

Congress attempted to address these failures through Temporary Expanded Public Service Loan Forgiveness (TEPSLF), a 2018 expansion to PSLF that aimed to allow borrowers to secure PSLF even if they had been enrolled in the wrong repayment plan.⁴¹ But TEPSLF has proven to be a bandaid on a bullet wound. This purported fix has a 97 percent rejection rate⁴² and has been the subject of inquiry by government auditors who concluded that its implementation, like that of PSLF, has been marred by poor execution.⁴³

Still other borrowers, particularly parent borrowers, may have loans that do not qualify them for IDR, or only qualify them for a limited number of plans. Although they could consolidate their loans to gain access to more options and receive credit for past payments under the current waiver, this relief is time-limited, requires affirmative steps by borrowers, and comes at a time when distrust of the student loan system is understandably high. After the waiver, borrowers who did not consolidate will again be left with few and no good options: continue to miss out on PSLF credit or consolidate and lose years of payments.

The Department should, to the maximum extent allowable by law, expand the range of repayment plans and the circumstances under which payments are counted towards PSLF. This includes codifying the waiver benefits and explicitly permitting the counting of payments made under any payment plan, consistent with the law and with the principles established by Congress in TEPSLF. Where the Secretary needs to use his authority to settle or compromise loans that would not otherwise qualify, he should do so—ensuring all borrowers with all loan types and all payment arrangements are given credit for their public service.

³⁸ 34 C.F.R. § 685.219.

³⁹ Direct Loan Portfolio by Repayment Plan, <https://studentaid.gov/data-center/student/portfolio>.

⁴⁰ See *infra* Section 2.

⁴¹ Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, 132 Stat. 1059 (2018).

⁴² <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

⁴³ <https://www.gao.gov/assets/gao-19-595.pdf>.

2. Years of Industry Abuses Kept Borrowers in Ineligible Loans and Payment Plans and Robbed Them of Credit Toward Loan Forgiveness.

The history of federal student loan servicing is marked both by industry’s self-serving abuses against borrowers and by its poor customer service. Too many borrowers report having been told by their servicer that their loans did not qualify for PSLF, without being advised of the option to consolidate into an eligible Direct Consolidation Loan. Still others were told that they were on track for PSLF, only to be notified upon filing an ECF or, worse, rejected after ten years, for having the wrong loan type, working at an ineligible employer, or being enrolled in an unacceptable payment plan.⁴⁴ Some borrowers who struggled to afford the standard monthly payment and asked their servicers for help, even if unaware of PSLF, were steered into serial deferments or forbearances instead of IDR plans with low or zero dollar payments that would have also accrued credit toward forgiveness. Recordkeeping—which should be a core function for any financial services company, such as a loan servicer—has proven difficult for many servicers, resulting in thousands of federal student loan borrowers who cannot access their complete payment history.

When these outcomes arise, these borrowers are robbed of years of payments that should apply to loan forgiveness, and they must continue to pay beyond the ten years of service that Congress promised would allow them to secure debt cancellation. What’s more, there is a spillover effect in terms of qualifying employers when these borrowers’ colleagues understandably rely on this same servicer misinformation and assume they, too, are progressing toward loan forgiveness as a public service worker.

Under the Higher Education Act, ED has the legal authority to hold borrowers harmless for servicer errors or misconduct in which they played no role. The government also has the moral obligation to make these borrowers whole, rather than leaving them holding the bag for industry failures. Although the recent waiver should prorate credit and bring many borrowers current on their PSLF eligibility, for those who are unable to take required action over the waiver’s limited duration or for those whom the waiver offers no relief, the Department has yet to help.

The Department must build on its recent waiver announcement to create a path to forgiveness for these remaining public service workers. It should use each of its authorities, including the authority to modify, settle, or compromise loans at the discretion of the Secretary, to ensure that any FFEL borrower who has worked in public service for ten years receives loan forgiveness, even after October 31, 2022. It should also grant prorated PSLF credit to any borrower who was in an ineligible payment plan, including borrowers in deferment and forbearance, especially those whose loan records are incomplete due to poor servicer recordkeeping or where there is evidence of a pattern or practice of deception or other improper loan servicing.

⁴⁴ <https://protectborrowers.org/calling-on-americas-public-service-workers-share-your-pslf-story/>.

2.1. Borrowers with FFELP loans continue to face harm due to servicers' ongoing failure to inform these borrowers of their ability to access PSLF.

When Congress determined that only Direct Loans would qualify for PSLF, it also provided a way for borrowers with any type of federal student loans to get on track. Unfortunately, the Department failed to instruct lenders and student loan servicers to provide information to borrowers with Federal Family Education Loan (FFEL) loans—older federal student loans that are not otherwise eligible for PSLF—about how to consolidate their ineligible loans into eligible Direct Loans.⁴⁵ The disastrous consequences of this failure are borne out in the many consumer complaints⁴⁶ and government investigations⁴⁷ into servicers about their misrepresentations to borrowers about their ability to access PSLF: rather than instructing FFEL borrowers to consolidate, servicers simply told them that they do not qualify for forgiveness. They did this because, as government auditors have noted,⁴⁸ it was in their financial interest to do so.⁴⁹ Shockingly, it appears that this problem is ongoing.⁵⁰

Although the requirement that borrowers obtaining PSLF have Direct Loans is written into the Higher Education Act, the Department's recent waiver announcement creates a path for FFEL and other ineligible borrowers who consolidate into a Direct Loan to receive credit toward PSLF for payments made on their pre-consolidation loans. This waiver of qualifying loan type is

⁴⁵ https://protectborrowers.org/ffelp_reportlp/.

⁴⁶ <https://protectborrowers.org/why-ffelp-borrowers-are-routinely-denied-access-to-pslf/>.

⁴⁷ See, e.g.

<https://www.washingtonpost.com/education/2019/01/05/acss-million-settlement-new-york-places-spotlight-problem-s-student-loan-servicing/> (“According to the complaint, ACS misled borrowers about income-driven repayment plans that can lower monthly bills and eventually offer loan forgiveness. To take advantage of those plans, borrowers had to consolidate their loans into a loan program that would have resulted in the account being transferred to another servicing company. ACS allegedly failed to provide borrowers seeking consolidation necessary account information, which prevented some from completing the process for more than three year.”).

⁴⁸ <https://www.gao.gov/assets/gao-16-523.pdf> (“We previously reported that Education’s performance metrics and related compensation for loan servicers can sometimes hinder Education’s strategic goals of providing superior customer service. For example, we reported that loan servicers are not compensated for their loss when a loan is transferred to the PSLF loan servicer, and Education officials acknowledged that the lack of compensation for transferred loans could be a disincentive for servicers to counsel borrowers about PSLF. As described below, this economic conflict of interest appears to drive shoddy and allegedly unlawful servicing practices—too often, borrowers have been denied access to timely and accurate information, allowing these companies to continue to hold these debts and profit off of them.”).

⁴⁹ https://protectborrowers.org/wp-content/uploads/2020/12/BrokenPromises_FFEL.pdf at 15.

⁵⁰ https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf#page=37 (“Examiners found that servicers engaged in a deceptive act or practice by advising borrowers with FFELP loans that the loans could not become eligible for PSLF. . . . Examiners found that during calls servicers represented to consumers with FFELP loans that they had no potential course of action to become eligible for PSLF. This representation was likely to mislead consumers because, in fact, their loans could become eligible through consolidation. Consumers’ interpretation was reasonable under the circumstances because they reasonably believed that they had made their interest in eligibility for PSLF clear, and reasonably interpreted the servicers’ representations to mean that they could not take steps to qualify for PSLF. The representations were material because consumers called to inquire about loan forgiveness and if they had received accurate information may have taken steps to convert their FFELP loans to Direct Loans.”).

time-limited, however, and after October 31, 2022, borrowers who did not consolidate their older loans will again be ineligible for PSLF or will lose credit toward forgiveness after consolidation for previously made payments.

Given the documented industry abuses, the resulting and understandable mistrust of the federal student loan system for many borrowers, and the short timeframe for the waiver, the Department can and should take steps to hold any remaining public service worker FFEL borrowers harmless and to deliver on the promise of loan forgiveness, regardless of loan type. The Department should use its full suite of statutory tools and authorities to extend loan forgiveness even after the waiver expires to all public service workers who have accrued ten year years of payments but remain in an ineligible loan. Drawing on its inherent authority under the Higher Education Act to settle or compromise any federally guaranteed or issued student loan,⁵¹ the Department should modify the ECF form as part of the rulemaking process to create a path for remaining FFEL borrowers—or borrowers with other non-Direct Loans—to request an individualized assessment of their loan and employment history. Any such borrower who has over ten years of repayment history while in a qualifying public service job should have their loan forgiven by the Secretary as there is no compelling policy justification for denying forgiveness after October 31, 2022, to borrowers who would have qualified prior to that date but who did not affirmatively opt-in in time, particularly given the history of industry misconduct or barriers to payment relief.

2.2. Borrowers lost qualifying payments because servicers failed to guide them into qualifying IDR plans.

Countless borrower narratives⁵² and legal actions across the country⁵³ have made clear that public service workers are routinely denied PSLF because they were not informed that they must be enrolled in an IDR plan, often even despite clearly and frequently asking their servicer whether this was the case. Still others who did not know to inquire about PSLF sought help to make their monthly payments affordable, and rather than being advised about IDR, they were placed in short-term deferments or forbearances, sometimes repeatedly, which do not qualify for PSLF.⁵⁴

The frequency and ubiquity of these industry failures are well documented by federal and state law enforcement. When a borrower could have qualified for an IDR plan but was misguided by their servicer, they must be held harmless. Although the Department's current waiver provides

⁵¹ 31 U.S.C. § 3711(a)(2).

⁵² See, e.g., <https://www.regulations.gov/comment/ED-2021-OUS-0082-3433>, <https://www.regulations.gov/comment/ED-2021-OUS-0082-46211>, <https://www.regulations.gov/comment/ED-2021-OUS-0082-45086>, <https://www.regulations.gov/comment/ED-2021-OUS-0082-1600>.

⁵³ See, e.g., <https://www.aft.org/press-release/class-action-lawsuit-launched-against-student-loan-servicer-navient-over>.

⁵⁴ See, e.g., <https://www.regulations.gov/comment/ED-2021-OUS-0082-31386>, <https://www.regulations.gov/comment/ED-2021-OUS-0082-3371>, <https://www.regulations.gov/comment/ED-2021-OUS-0082-46175>.

time-limited relief for some of these borrowers, it does so by granting credit to borrowers for months during which they were in repayment status on their loans. Those who were in repayment but the wrong plan will benefit from this waiver, but for borrowers seeking help who were steered into serial deferments and forbearances, the waiver does nothing, even though these borrowers would have been better suited in an IDR plan but were not advised of such by their servicers.

The Department must work to deliver PSLF relief for public service workers who were steered into deferments and forbearances. It can use the same authority on which it relies in its proposed amendments to existing regulations that would grant PSLF credit for certain deferments for economic hardships under section 685.204(g) or for cancer treatment under 455(f)(3) of the HEA, or for deferment or forbearance associated with active duty military service. Serial use of deferments or forbearances signal both that a borrower would presumptively have qualified for low or zero dollar qualifying IDR payments and/or that predatory servicers steered borrowers away from affordable and PSLF-qualifying alternatives. The Department has the authority to make things right for these borrowers.

3. ED's Own Procedures Result in Additional Barriers to Forgiveness For Public Service Workers, and Should Be Revised to Increase Transparency and Hold Borrowers Harmless.

As its recent waiver announcement demonstrates, the Department must make every effort and use every authority available in order to deliver statutory benefits to eligible borrowers whenever possible. In addition to the regulatory and industry matters discussed above, ED could make procedural changes to lower barriers to relief for borrowers and to ensure greater transparency. Specifically, ED can shift the burden of employer certification away from individual borrowers, revamp its appeals process, and award PSLF credit for administrative delays out of borrowers' control.

3.1. Employers, borrowers, and their advocates continue to rely on an error-prone, individualized, worker-directed process for certifying employment

In 2012, the ED created the voluntary Employment Certification Form—a document that can be completed by a public service worker on a periodic basis as a means to signal intent to pursue PSLF. This form enables an individual worker to document a period of public service work and seek recognition from ED that the employer certified on this form is a qualified employer for the purpose of PSLF. This process is administratively burdensome for workers and employers and introduces significant additional operational challenges for ED and its student loan servicing contractors.

A robust body of evidence shows that this individualized process has led to arbitrary decision-making by ED, including circumstances where ED approved certification of an employer and then denied eligibility to that same employer in a subsequent year, and circumstances where two workers at the same employer received different determinations of eligibility. These errors have led to multiple lawsuits against the Department for mishandling a process that is not required under the law and was created out of whole cloth by Department staff without notice and comment or meaningful engagement with public service workers, public service employers, or their advocates.⁵⁵

To remedy these significant administrative failures, and to ensure that the Department can more fully automate PSLF moving forward, the Department should create a process through which employers can independently obtain recognition by the Department as a qualifying employer for the purpose of PSLF and can submit a group certification of employment on behalf of multiple public service workers with student debt. These group certifications can mirror the just-announced process for automatic certification underway between ED and the Department of Defense for military borrowers and between ED and the Office of Personnel Management for federal employees. The benefits of a group certification process are many: it reduces or eliminates administrative burden on workers to independently track their service; it enables employers to incorporate PSLF into their benefits offerings ensuring eligible public service workers are aware of and can pursue loan forgiveness; and it provides certainty to employers and to ED, particularly where a private, non-profit organization is not a 501(c)3. Allowing for group employer certifications would be particularly useful during the time-limited waiver period to process the maximum number of borrowers possible efficiently and with minimal borrower action.

3.2. Borrowers continue to lack a straightforward, independent, and comprehensive framework for addressing issues related to erroneous PSLF denials.

Errors in the management of PSLF leading to the miscounting of payments, denial of PSLF applications, and rejection of Employment Certification Form submissions are widespread,⁵⁶ and even proper denials include little detail for borrowers regarding the grounds for their rejection.⁵⁷ Further, if additional information is required to support a rejected borrower's application, what specifically is needed is not always clearly stated.⁵⁸ The result is that borrowers who may be eligible for PSLF are led astray by a lack of proper management and transparency.

⁵⁵ <https://protectborrowers.org/aft-and-sbpc-ecf-pslf/>.

⁵⁶ <https://www.gao.gov/assets/gao-19-595.pdf#page=21>; <https://www.gao.gov/assets/gao-18-547.pdf#page=27>.

⁵⁷ https://www.aft.org/sites/default/files/weingarten_v_devos_complaint.pdf#page=8.

⁵⁸ https://www.aft.org/sites/default/files/weingarten_v_devos_complaint.pdf#page=51.

Worse, even when the Department provides explanations for its denials, borrowers have no formal process to appeal decisions they believe were made in error. Recent reporting indicates that what avenues for redress have been available to borrowers have been ad-hoc and intentionally obfuscated from borrowers' view,⁵⁹ and there is no process for organizations to work directly with the Department or its contractors when similarly situated employees receive different treatment for their employment certifications. Where borrowers should have a readily available and independent authority to which they can appeal adverse decisions by their servicers, none is clearly offered.

Without more transparency, eligible borrowers will continue to be improperly blocked from relief. Nothing in the Higher Education Act prevents the Department from providing transparent explanations for any PSLF denials, creating mechanisms to ensure consistency across similarly-situated borrowers, developing systems for borrowers and their representatives or employers to appeal errors, and requiring servicers to clearly promote these means of appeal to borrowers. The Department should use its authority to ensure that specific processes for PSLF appeals are enumerated in the HEA's implementing regulations, including providing specific timelines for acknowledgment and response, and that any processes are clearly presented to borrowers alongside any adverse determination.

The Department should also be transparent with negotiators about the process for FSA officials to consider and adjudicate escalated issues with the administration of PSLF and IDR, including servicing abuses and errors. Specifically, FSA should establish a dedicated unit of federal employees who report directly to the Chief Operating Officer (COO) and is independent of any unit within FSA that administers vendor contracts. Internal government records indicate that, for too long, borrowers seeking assistance from FSA related to the mismanagement of IDR and PSLF have had their rights denied out of concerns about the cost to the government or the administrative burden placed on FSA's contractors. The law is clear and it does not give the Secretary or the COO the latitude to deny borrowers' eligibility for any reason other than those set forth in statute and regulations. To the extent new regulations are necessary to codify this independent appeals process, ED should do so.

3.3. Borrowers are being penalized for administrative delays that are wholly beyond their control.

The current PSLF application process contains countless potential pitfalls that lead borrowers to be denied the forgiveness they are due for reasons that are entirely outside of their own control. For example, when borrowers apply for an income-driven repayment plan or recertify their existing plan, they are generally placed in a forbearance that does not qualify them to continue making progress toward PSLF. Borrowers are ultimately able to once again begin accruing payments toward PSLF only after their application is accepted, but that process can take months

⁵⁹ <https://www.nytimes.com/2020/02/17/business/federal-student-loan-appeals.html>.

and be extremely unpredictable, especially during COVID,⁶⁰ due entirely to their servicer. Borrowers are given no credit for the months they may spend waiting in limbo for their servicer to do its job.

Moreover, unforeseeable processing delays are only the tip of the iceberg with regard to uncontrollable events that delay or derail borrowers' pursuit of PSLF. Borrowers are also administratively barred from making eligible payments due to delays in the loan consolidation process, which can be equally unpredictable and lengthy; due to improper denials for waivers of in-school deferment, which amount to processing errors that borrowers have nothing to do with; and due to application denials arising without the opportunity for borrowers to provide additional or alternative paperwork that would resolve the issue, something over which staff at ED and its servicers have huge discretion.⁶¹

Where administrative errors or servicer misconduct jeopardize borrowers' credit toward forgiveness, borrowers should be held harmless. For example, borrowers who successfully apply for and/or recertify enrollment in IDR should receive credit toward PSLF from the time the relevant application was submitted, not from when it was approved. Borrowers should not be penalized because their servicer could not promptly certify their application and begin the appropriate payment plan.

The same logic should hold across all PSLF-related errors that are outside of borrowers' control. When eligible borrowers experience administrative roadblocks to forgiveness, whether pending applications or otherwise, they should be credited for the full amount of qualifying payments that they would have accrued were it not for those delays.

Conclusion

As we have written elsewhere,⁶² PSLF was premised on a simple promise: teachers, nurses, servicemembers, and other dedicated public service workers who took on student loan debt to pursue their careers would get their loans forgiven in exchange for a decade of service in their communities. Those borrowers went on to uphold their end of the deal. Washington did not, and 98 percent of public service workers who have applied for the relief they earned have been denied it as a result.

In its upcoming rulemaking, the Department can and must take bold action to restore the promise of PSLF for millions of public service workers. As enumerated above, these actions are all

⁶⁰ See, e.g., <https://www.regulations.gov/comment/ED-2021-OUS-0082-1824>.

⁶¹ https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf.

⁶²

<https://protectborrowers.org/newly-uncovered-internal-projections-from-a-department-of-education-contractor-show-pslf-problems-will-persist-over-time/>.

already within the Department’s existing authorities. In many cases, ED has previously used those authorities to create administrative hurdles and traps that currently stand between borrowers and forgiveness. Now, it can choose to do the opposite, and to pave pathways that guide borrowers toward relief.

Of course, although the key concerns outlined above and the upcoming negotiated rulemaking as a whole are largely forward-looking, affecting *future* PSLF applicants, and even with the current waiver, executive action to assist the many borrowers PSLF has already failed is still necessary.⁶³ In particular, the Biden administration must act to affirm that borrowers who have already performed a decade or more of public service—including parent borrowers, adjunct and contract workers, and those steered into deferments and forbearances—will have that work be recognized in the eyes of PSLF, regardless of historical technicalities and industry misdirection. Efforts to fix past wrongs only with forward-looking changes in other areas of student loan borrower protection, such as with regard to income-driven repayment,⁶⁴ have largely proven insufficient.⁶⁵ The same lesson should apply here, and more tailored action should be taken to address the needs of borrowers who have already been denied PSLF. The administration has begun this process with its time-limited waiver, but more action is necessary to deliver to PSLF promise to all public service workers.

ED has an opportunity in its upcoming rulemaking to change the course of PSLF from tragedy to triumph. It can enshrine some of its waiver provisions in regulation, and go beyond the limited relief that the waiver offers by addressing the other areas outlined in this memorandum, such as employer type. With millions of public service workers’ financial futures on the line, it is long past due for the Department to restore the promise of PSLF.

⁶³ <https://protectborrowers.org/wp-content/uploads/2021/02/Delivering-on-Debt-Relief-Final.pdf#page=27>.

⁶⁴ See, e.g., <https://www.americanprogress.org/issues/education-postsecondary/news/2015/08/18/119574/proposed-student-loan-repayment-plan-would-extend-the-same-income-based-terms-to-all-federal-loan-borrowers/>.

⁶⁵ See, e.g. <https://news.yahoo.com/only-32-student-loan-borrowers-041905513.html>.

APPENDIX

Proposed Amendment to 34 C.F.R. §§ 685.219, 682.205

The proposed changes that appear in pink below were initially proposed by ED. The proposed changes that appear in green are in addition to ED's proposals and, in some instances, propose revisions to ED's proposals.

§ 685.219 Public Service Loan Forgiveness Program.

(a) **General.** The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and ¹continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) **Definitions.** The following definitions apply to this section:

AmeriCorps position means a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 ([42 U.S.C. 12573](#)).

Early childhood education program means an early childhood education program as defined in Section 103(8) of the Act (20 U.S.C. 1003).

Eligible Federal Direct loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS loan, or a Direct Consolidation loan.

Employee or employed means an individual ~~who is hired and paid by a public service organization to whom an organization issues an IRS Form W-2 or who receives an IRS Form W-2 from an organization that contracts services providing human resources or other administrative requirements.~~

Full-time -

(1) means working in qualifying employment in one or more jobs ~~for the greater of -~~

(i)

(A) ~~An annual average of a~~ At least 30 hours per week, or

(B) ~~For a contractual or employment period of at least 8 months, an average of~~ At least 30 hours per week ~~throughout a contractual or employment period of at least eight months (like those of elementary and secondary school teachers);~~ or

(C) The equivalent of 30 hours per week by converting each credit hour taught into at least 3.352.5 hours worked each week, for adjunct, contingent, and other non-tenure faculty employment.

(ii) Unless the qualifying employment is with two or more employers, the number of hours the employer considers full-time. ¶¶

(2) When determining whether a borrower works full-time, the Secretary includes Vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993, [29 U.S.C. 2612\(a\)\(1\)](#) and ¶¶

(3) is not considered in determining the average hours worked on an annual or contract basis toward the number of hours worked per week.

Government employee means an individual who is employed by a local, State, Federal, or Tribal government, but does not include a member of the U.S. Congress. ¶¶

Law enforcement means service performed by an employee of a public service organization that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means “active duty” service or “full-time National Guard duty” as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code, but does not include active duty for training or attendance at a service school. For civilians, “Military service” means service on behalf as an employee of the U.S. Armed Forces or the National Guard performed by an employee of a public service organization.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under [22 U.S.C. 2504](#).

Public health means nurses, nurse practitioners, and nurses in a clinical setting; and those engaged in health care practitioner occupations, health care support occupations, and counselors, social workers, and other community and social service specialist occupations, as such those terms are defined by the Bureau of Labor Statistics.

Public interest law refers to legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public service means emergency management, military service, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities and the elderly, public health, public education, public library services, school library, or other school-based services.

~~Public service organization~~ **Qualifying employer** means:

- (i) A **United States-based** Federal, State, local, or Tribal government organization, agency, or entity;
- ~~(ii) A public child or family service agency;~~
- (ii) A non-profit organization under section 501(c)(3) of the Internal Revenue Code of **1986** that is exempt from taxation under section 501(a) of the Internal Revenue Code; or
- ~~(iv) A Tribal college or university; or ¶~~
- (v) **An organization that**
 - ~~(A) A private organization that provides the following public services: Emergency management, military service, public safety, law enforcement, public interest law services, early childhood education (including licensed or regulated child care, Head Start, and State funded pre-kindergarten), public service for individuals with disabilities and the elderly, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, public library services, school library or other school-based services~~ **a public service; and**
 - ~~(B) Is not a business organized for profit, a labor union, or a partisan political organization.~~

Qualifying repayment plan means:

- (1) **An income-based repayment plan under §685.221;**
- (2) **An income-contingent repayment plan under §685.209, including any alternative repayment plan under §685.209(c)(4)(v);**
- (3) **The 10-year standard repayment plan under §685.208(b) or consolidation standard repayment plan with a 10-year repayment term under §685.208(b); or**
- (4) **Except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the 10-year standard repayment plan under §685.208(b).**

(c) **Borrower eligibility.**

- (1) A borrower may obtain loan forgiveness under this program if ~~he or she~~ **the borrower** -

- (i) Is not in default on the loan for which forgiveness is requested;
- (ii) Is employed full-time by a ~~public service organization~~ **qualifying employer** or serving in a full-time AmeriCorps or Peace Corps position -

~~(A) When~~ **During the month for which** the borrower ~~makes~~ **satisfied** the 120 monthly payments described under [paragraph \(c\)\(1\)\(iii\)](#) of this section; **and**

~~(B) At the time of application for loan forgiveness; and ¶~~

~~(C) At the time the remaining principal and accrued interest are forgiven~~ **borrower applies for forgiveness under paragraph (e) of this section; and:**

- (iii) ~~Makes~~ **Satisfied the equivalent of** 120 ~~separate~~ monthly payments after October 1, 2007, **as described in paragraph (c)(2) of this section**, on eligible Direct loans. ~~for which forgiveness is sought. Except as provided in paragraph (c)(2) of this section for a borrower in an AmeriCorps or Peace Corps position or who qualifies for partial repayment of his or her loans under the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,, the borrower must make the monthly payments within 15 days of the scheduled due date for the full scheduled installment amount; and~~

- ~~(iv) Makes the required 120 monthly payments under one or more of the following repayment plans - ¶~~

~~(A) Except for a parent PLUS borrower, an income-based repayment plan, as determined in accordance with § 685.221; ¶~~

~~(B) Except for a parent PLUS borrower, an income-contingent repayment plan, as determined in accordance with § 685.209; ¶~~

~~(C) A standard repayment plan, as determined in accordance with § 685.208(b); or ¶~~

~~(D) Except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the Direct Loan standard repayment plan described in § 685.208(b).~~

- (2) ~~If a borrower makes a lump sum payment on an eligible loan for which the borrower is seeking forgiveness by using all or part of a Segal Education Award received after a year of AmeriCorps service, or by using all or part of a Peace Corps transition payment if the lump sum payment is made no later than six months after leaving the Peace Corps or if a lump sum payment is made on behalf of the borrower through the student loan repayment programs under 10 U.S.C. 2171, 2173, 2174, or any other student loan repayment programs administered by the Department of Defense,, the Secretary will consider the borrower to have~~

~~made qualifying payments equal to the lesser of~~ A borrower may satisfy monthly payments under paragraph (c)(1)(iii) of this section by -

- (i) Paying the full scheduled amount due for a monthly payment under the qualifying repayment plan;
- (ii) Paying in multiple installments, over any period of time, that equal the full scheduled amount due for a monthly payment under the qualifying repayment plan;
- (iii) Paying a lump sum or monthly payment amount equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the borrower's next annual repayment plan recertification date under the qualifying repayment plan in which the borrower is enrolled;
- (iv) Receiving one of the following deferments:
 - (A) A cancer treatment deferment under 455(f)(c) of the Act;
 - (B) A Peace Corps service deferment under §685.210(k), as applicable to Direct Loan borrowers under §685.204(i);
 - (C) An economic hardship deferment under §685.204(g); or
 - (D) A military service deferment under §685.204(h);
- (v) Deferring or forbearing payments-
 - (A) One time, for up to 12 months, due to service in an AmeriCorps position, if the borrower subsequently applies a Segal Education award to the borrower's eligible Direct Loans; ~~or~~
 - (B) For as many periods as the borrower's employment causes them to receive a U.S. Department of Defense-administered student loan repayment benefit under 10 U.S.C. 2171, 2173, 2174 and 16302, except that in no case may a borrower satisfy monthly payments under this section for more than 12 months in a year; ~~or~~
 - (C) During the pendency of any application by the borrower;
 - (D) Where the use of any other deferment or forbearance -
 - (i) Creates a presumption of eligibility for an economic hardship deferment under §685.204(g) as determined by the Secretary; or

(ii) Occurred while the deferred or forborne loan was serviced by a servicer alleged by the Secretary, Federal or State law enforcement, or financial regulators to have improperly serviced federal student loans, including but not limited to circumstances where inaccurate or disadvantageous information was provided to borrowers; or

(E) Where a deferment or forbearance has been administratively applied to a borrower's student loan account on a borrower's behalf without his or her consent.

(vi) On a Direct Consolidation Loan, meeting the criteria in paragraph (c)(2)(i)-(iii) on an eligible Direct Loan that was consolidated.

(3) Service as a member of U.S. Congress is not qualifying employment.

(4) Under paragraph (c)(2)(iii) of this section, a borrower will be deemed to have satisfied the number of monthly repayment obligations that is the lesser of –

(i) The number of months resulting after dividing the amount of the payment received under paragraph (c)(2)(iii) of this section by the monthly payment amount the borrower would have been obligated to make under paragraph (c)(2) of this section had the borrower not received the deferment or forbearances; or

~~The number of payments resulting after dividing the amount of the lump sum payment by the monthly payment amount the borrower would have made under [paragraph \(c\)\(1\)\(iv\)](#) of this section; or~~

(ii) Twelve payments.

~~(3) The Secretary considers lump sum payments made on behalf of the borrower through the student loan repayment programs under [10 U.S.C. 2171, 2173, 2174](#), or any other student loan repayment programs administered by the Department of Defense, to be qualifying payments in accordance with [paragraph \(c\)\(2\)](#) of this section for each year that a lump sum payment is made. ¶¶~~

(5) Notwithstanding paragraphs (c)(1)-(4) of this section, a borrower may obtain loan forgiveness for a federal student loan(s) other than an Eligible Federal Direct loan if the borrower indicates in a manner determined by the Secretary and during the application process described in paragraph (e) of this section, and verifiable using the procedures described therein, that after October 1, 2007, and during the term of said loan(s), the borrower worked the equivalent of 120 months in qualifying employment.

(d) **Forgiveness Amount.** The Secretary forgives the principal and accrued interest that remains on all ~~eligible loans for which loan forgiveness is requested by the borrower. The~~

~~Secretary forgives this amount after the borrower makes the 120 monthly qualifying payments under paragraph (c) of this section~~ the borrower meets the requirements of paragraph (c) of this section as of the date the borrower satisfied the last required monthly payment obligation.

(e) ***Application Process.***

(1) ~~Notwithstanding paragraph (f) in this section, After~~ after making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested, a borrower may request a determination of loan forgiveness on a form ~~provided~~ approved by the Secretary.

(2) To receive a determination under paragraph (1) of this section –

(i) A borrower shall provide information about the borrower's employment and, to the extent necessary, employer on a form approved by the Secretary, including but not limited to authorization for the Secretary to engage in data-matching or other information-sharing agreements, in compliance with Federal law and as may be necessary, to verify the borrower's eligibility for loan forgiveness.

(ii) If the borrower is unable to secure a signature from an employer, the Secretary may determine the borrower's qualifying employment or payments based on the documentation provided by the borrower at the Secretary's request.

(iii) The Secretary may request additional documentation pertaining to the borrower's employer or employment before providing a determination.

(3) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary -

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

~~(3)~~ If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, the Secretary resumes collection of the loan and grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis or bases for the denial and for which months they apply, and informs the borrower that the Secretary will resume collection of the loan. The Secretary shall include in any notice of denial contact information for the borrower to address any request for reconsideration pursuant to paragraph (g) of this section. The Secretary may capitalize any interest accrued and not paid during this period, but shall not do so until after the 90 days provided by paragraph (e)(1) of this section have expired.

(f) ***Application not required.*** (1) The Secretary may forgive a loan under this section without an application from the borrower if the Secretary has sufficient information in the Secretary's possession to determine the borrower has satisfied the requirements for forgiveness under the section.

(2) In assessing a borrower for loan forgiveness pursuant to paragraph (f)(1) of this section, the Secretary may enter into data-matching or other information-sharing agreements, in compliance with Federal law and as may be necessary, to allow for verification for multiple borrowers' employment. Nothing in this section shall prohibit the Secretary from seeking authorization from a borrower for the Secretary to seek information from the borrower's employer(s).

(3) If the Secretary determines that a borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary shall notify the borrower pursuant to paragraph (e)(3) of this section.

(g) ***Reconsideration Process.*** (1) Within 90 days of receiving a notice under paragraph (e)(4) of this section, the borrower may request that the Secretary reconsider whether the borrower's employer or payment qualifies for PSLF by requesting reconsideration on a form approved by the Secretary. Borrowers who were denied prior to [EFFECTIVE DATE OF REGS] shall have 90 days from that date to request reconsideration.

(2) To evaluate a reconsideration request, the Secretary considers any relevant evidence that is –

(i) Reasonably obtainable or currently in the Secretary's possession; and

(ii) Additional supporting documentation not previously provided by the borrower or employer.

(3) The Secretary notifies the borrower of the reconsideration decision and the reason for the Secretary's determination.

(4) If the Secretary grants some or all of the borrower's request for reconsideration, then the Secretary adjusts the borrower's number of qualifying payments or forgives the loan, as appropriate.

(5) After the Secretary makes a decision on the borrower's reconsideration request, the Secretary's decision is final, and the borrower is not permitted to request an additional reconsideration without any additional evidence.

(Authority: [20 U.S.C. 1087e\(m\)](#))

§ 682.205 Disclosure requirements for lenders.

(a) *Repayment information* -

(1) ***Disclosures at or prior to repayment.*** The lender must disclose the information described in [paragraph \(a\)\(2\)](#) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Federal Stafford or Federal PLUS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 150 days before the first payment on the loan is due from the borrower. If the borrower enters the repayment period without the lender's knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with -

(i) The lender's name, a toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date the repayment period is to begin, or a deferment under [§ 682.210\(v\)](#), if applicable, is to end;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, a deferment under [§ 682.210\(v\)](#), if applicable, is to end, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments based on the repayment schedule selected by the borrower;

(vii) Except in the case of a Consolidation loan, an explanation of any special options the borrower may have for consolidating or refinancing the loan and of the availability and terms of such other options;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule, and if interest has been paid, the amount of interest paid;

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(x) Information on any special loan repayment benefits offered on the loan, including benefits that are contingent on repayment behavior, and any other special loan repayment benefits for which the borrower may be eligible that would reduce the amount or length of

repayment; and at the request of the borrower, an explanation of the effect of a reduced interest rate on the borrower's total payoff amount and time for repayment;

(xi) If the lender provides a repayment benefit, any limitations on that benefit, any circumstances in which the borrower could lose that benefit, and whether and how the borrower may regain eligibility for the repayment benefit;

(xii) A description of all the repayment plans available to the borrower and a statement that the borrower may change plans during the repayment period at least annually;

(xiii) A description of the options available to the borrower to avoid or be removed from default, as well as any fees associated with those options; and

(xiv) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(3) ***Required disclosures during repayment.*** In addition to the disclosures required in [paragraph \(a\)\(1\)](#) of this section, the lender must provide the borrower of a FFEL loan with a bill or statement that corresponds to each payment installment time period in which a payment is due that includes in simple and understandable terms -

(i) The original principal amount of the borrower's loan;

(ii) The borrower's current balance, as of the time of the bill or statement;

(iii) The interest rate on the loan;

(iv) The total amount of interest for the preceding installment paid by the borrower;

(v) The aggregate amount paid by the borrower on the loan, and separately identifying the amount the borrower has paid in interest on the loan, the amount of fees the borrower has paid on the loan, and the amount paid against the balance in principal;

(vi) A description of each fee the borrower has been charged for the most recent preceding installment time period;

(vii) The date by which a payment must be made to avoid additional fees and the amount of that payment and the fees;

(viii) The lender's or servicer's address and toll-free telephone number for repayment options, payments and billing error purposes; and

(ix) A reminder that the borrower may change repayment plans, a list of all of the repayment plans that are available to the borrower, a link to the Department of Education's Web site for repayment plan information, and directions on how the borrower may request a change in repayment plans from the lender.

(x) A reminder about the Public Service Loan Forgiveness Program, including the address of the Department of Education's website for PSLF.

(4) Required disclosures for borrowers having difficulty making payments.

(i) Except as provided in [paragraph \(a\)\(4\)\(ii\)](#) of this section, the lender must provide a borrower who has notified the lender that he or she is having difficulty making payments with -

(A) A description of the repayment plans available to the borrower, and how the borrower may request a change in repayment plan;

(B) A description of the requirements for obtaining forbearance on the loan and any costs associated with forbearance; and

(C) A description of the options available to the borrower to avoid default and any fees or costs associated with those options.

(ii) A disclosure under [paragraph \(a\)\(4\)\(i\)](#) of this section is not required if the borrower's difficulty has been resolved through contact with the borrower resulting from an earlier disclosure or other communication between the lender and the borrower.

(5) Required disclosures for borrowers who are 60-days delinquent in making payments on a loan.

(i) The lender shall provide to a borrower who is 60 days delinquent in making required payments a notice of -

(A) The date on which the loan will default if no payment is made;

(B) The minimum payment the borrower must make, as of the date of the notice, to avoid default, including the payment amount needed to bring the loan current or payment in full;

(C) A description of the options available to the borrower to avoid default, including deferment and forbearance and any fees and costs associated with those options;

(D) Any options for discharging the loan that may be available to the borrower; and

(E) Any additional resources, including nonprofit organizations, advocates and counselors, including the Department of Education's Student Loan Ombudsman, the lender is aware of where the borrower may obtain additional advice and assistance on loan repayment.

(ii) The notice must be sent within five business days of the date the borrower becomes 60 days delinquent, unless the lender has sent such a notice within the previous 120 days.

(b) **Exception to disclosure requirement.** In the case of a Federal Unsubsidized Stafford loan or a Federal PLUS loan, the lender is not required to provide the information in [paragraph \(a\)\(2\)\(viii\)](#) of this section if the lender, instead of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower or student on whose behalf the loan is made is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely

on the Stafford and PLUS promissory notes and associated materials approved by the Secretary for purposes of complying with this section.

(c) ***Borrower may not be charged for disclosures.*** The lender must provide the information required by this section at no cost to the borrower.

(d) ***Method of disclosure.*** Any disclosure of information by a lender under this section may be through written or electronic means.

(e) ***Notice of availability of income-sensitive and income-based repayment options.***

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive and, except for parent PLUS borrowers and Consolidation Loan borrowers whose Consolidation Loan paid off one or more parent PLUS Loans, income-based repayment plans. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower -

(i) That the borrower is eligible for income-sensitive repayment and may be eligible for income-based repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive or income-based repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive and income-based repayment plans.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in [paragraph \(e\)\(1\)](#) of this section.

(f) ***Disclosure procedures when a borrower's address is not available.*** If a lender receives information indicating it does not know the borrower's current address, the lender is excused from providing disclosure information under this section unless it receives communication indicating a valid borrower address before the 241st day of delinquency, at which point the lender must resume providing the installment bill or statement, and any other disclosure information required under this section not previously provided.