

March 29, 2022

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U.S. Department of Education
400 Maryland Ave. SW, LBJ, Room 6W208D
Washington, D.C. 20202

Re: Agency Information Collection Activities; Comment Request; Public Service Loan Forgiveness Reconsideration Request, Docket ID No. ED-2022-SCC-0039

Dear Ms. Mullan:

The undersigned organizations, which represent millions of student loan borrowers across the country, submit this letter in response to the U.S. Department of Education's ("ED") recent request for comment on the reconsideration process ("reconsideration") for the federal Public Service Loan Forgiveness ("PSLF") program.¹ The request also seeks comments on the information that ED must collect in order to properly review and correct any potential inaccuracies in ED's initial determinations of borrowers' PSLF eligibility.²

Although ED stated that reconsideration is not an opportunity for borrowers to "appeal program requirements that are set by law,"³ it is critical that ED use this opportunity to deliver on PSLF's promise of loan forgiveness to the maximum extent possible and with minimal administrative burden placed on individual borrowers. Nothing in the Higher Education Act prevents ED from using reconsideration of a borrower's individual account to address other injustices that arise during review. Launching a reconsideration that addresses known issues both would deliver on PSLF's promise and would help to restore borrowers' faith in government, which has been tested through their past experiences with PSLF. This is especially true because, by definition, a borrower seeking reconsideration has already had negative experiences and interactions with the PSLF program.

Additionally, given the enormous amount of information to which ED has direct access about borrowers' loans, employment, and payment history, and in recognition of the hours of work that any borrower seeking reconsideration would have already expended on the underlying PSLF

¹ U.S. Dep't of Educ., Agency Information Collection Activities; Comment Request; Public Service Loan Forgiveness Reconsideration Request, 87 FR 15,415 (Mar. 18, 2022) ("Department Notice"), <https://www.federalregister.gov/documents/2022/03/18/2022-05740/agency-information-collection-activities-comment-request-public-service-loan-forgiveness>.

² *Id.*

³ *Reconsideration for Public Service Loan Forgiveness (PSLF) and Temporary Expanded PSLF (TEPSLF) Coming April 2022*, U.S. Dep't of Educ., Fed. Student Aid, <https://studentaid.gov/announcements-events/reconsideration-for-pslf> (last viewed Mar. 23, 2022).

application, we urge ED to prioritize eliminating and reducing administrative burdens for the borrowers who are seeking to access their statutory right to loan forgiveness.

Below we provide six priorities that we believe respond to the request for comment and are necessary to make reconsideration work for borrowers seeking PSLF. Each is important for ensuring a transparent and functional program, and for offsetting many borrowers' deep-rooted distrust of the federal student loan system.

1. ED must ensure independent and objective review of reconsideration claims.

For reconsideration to accomplish its stated goal, borrowers' claims cannot be reviewed by the same entities that made the initial determination that is being appealed. For either FedLoan Servicing or MOHELA, as the respective past and successor dedicated servicers for PSLF, to review reconsideration claims would raise serious conflict of interest concerns that would be difficult to cure administratively and nearly impossible to remedy optically.

This is especially true given the reality of longstanding servicer abuses and the fact that the entire reconsideration program seeks to address accounts that were "handled incorrectly" by these servicers in the first place.⁴ The history of federal student loan servicing is marred both by the 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 federal student 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 a non-qualifying payment plan. 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 income-driven repayment 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. This issue is particularly acute for borrowers once serviced by the company ACS Education Services, which exited Direct Loan servicing in 2013 and eventually went out of business without retaining any records for the millions of borrowers whose accounts it serviced or providing a path to recover them.

As it is reasonable to assume that these companies' shortcomings and misconduct with respect to program eligibility would be borne out in the handling of administering accounts and PSLF applications, servicers cannot be allowed to compromise the very process meant to remedy their own shortcomings by reviewing reconsideration claims.

⁴ *Id.*

Specifically, to ensure independence and avoid conflicts of interest, Federal Student Aid (“FSA”) should establish a dedicated unit of federal employees who report directly to the Chief Operating Officer (“COO”) and that 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 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.

2. ED should maximize reliance on information already available and minimize requests to borrowers for supporting documents.

Given the complex and shifting standards governing PSLF, many borrowers receiving PSLF rejections or other adverse determinations either will not understand the grounds on which they were rejected or will lack access to payment count or other records needed to refute improper rejections, or both. For this reason, ED should take every action possible to reduce the administrative burden on individual borrowers seeking reconsideration.

Specifically, upon reviewing a claim, ED should first assess the determination being appealed for facial defects, then access borrowers’ loan histories through the National Student Loan Data System, and request any documentation from its contracted servicers. ED must only request additional documentation from borrowers as a final and last resort.

Where borrowers have independently collected evidence of government mismanagement or servicer errors, ED should provide an opportunity for borrowers to voluntarily contribute to building the evidentiary record necessary to reconsider a determination. However, this should be used to supplement information independently compiled by ED as part of this process and the absence of borrower-provided documentation should not be the sole basis for denying reconsideration.

We highlight this point because—although there will certainly be instances in which individual borrowers have to produce supporting documents—ED’s current request for comments on its proposed Information Collection Request appears to center borrower submissions in the reconsideration process. We urge ED to reduce the barrier of entry and review for borrowers by instead using borrower-produced documents as a source of last resort whenever possible.

3. All notices of PSLF determinations must clearly state the grounds for any adverse determination.

For the reconsideration process to be meaningful and to articulate a basis for review, borrowers must be able to understand why they were initially given an adverse determination. 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, and even proper denials include little detail for borrowers regarding the grounds for their rejection. Further, if

additional information is required to support a rejected borrower's application, what specifically is needed is not always clearly stated. The result is that borrowers who may be eligible for PSLF are led astray by a lack of proper management and transparency. Failure to address this existing flaw while initiating reconsideration would be unfair and would likely result in a flood of claims that are difficult to review.

Critically, the reason that ED must require transparent and articulate PSLF determinations is not so that borrowers themselves can address each supposed deficiency in their reconsideration claims. As discussed above, ED should make every effort possible to reduce borrower involvement in reconsideration. Rather, a notice that clearly states the grounds for rejection would provide FSA's independent review team, also discussed above, a clear place from which to commence their review and determine what documentation, if any, is needed to supplement the initial application.

Without more transparency, eligible borrowers will continue to be improperly blocked from relief, and will flood the reconsideration process with claims that can only be as articulate as the rejection notices themselves. Nothing in the Higher Education Act prevents ED from providing transparent explanations for any PSLF determinations, creating mechanisms to ensure consistency across similarly-situated borrowers, developing systems for borrowers and their representatives or employers to appeal errors, or requiring servicers to clearly promote these means of appeal to borrowers. ED should also use its authority to ensure that specific processes for PSLF reconsideration are clearly presented to borrowers alongside any adverse determination.

4. ED must articulate and commit to a specific timeframe for review.

ED's request for information specifically asks the public to comment on whether the information ED seeks would be "processed and used in a timely manner."⁵ Although it is ultimately out of the public's control whether ED uses this information in a timely manner, we urge the government to avoid servicer pitfalls by prioritizing customer service and efficiency in reconsideration.

Too many borrowers are currently stuck in limbo, languishing in an administrative review process with no set time frame and no way to receive a meaningful estimate of when they can expect a determination. This has long been a shortcoming of PSLF, and is currently the case with the Limited PSLF Waiver. Unreasonably slow processing time is a form of incorrectly handling a borrower's account, and although reconsideration may not be able to correct this type of mishandling, ED certainly does not need to replicate it.

This is not a matter of borrower impatience, but rather is one of justice deferred being justice denied. Eligible borrowers have a statutory right to have their federal student loans discharged through PSLF. For a borrower to spend months waiting for an inaccurate rejection to then spend an undetermined amount of time having that determination reviewed in reconsideration

⁵ Department Notice at 15,415.

represents both a failure to deliver on these promised rights and substantial financial uncertainty. In the event that a borrower's review exceeds the timeframe provided, ED can use its broad authority to offer incremental debt cancellation pegged to the duration of the remaining review.

5. ED should use reconsideration to provide corrective action for any instances of injustice, using all authorities available.

When a borrower seeks reconsideration, ED should review the specific claims the borrower makes, conduct a general review of their account to ensure the borrower is receiving all of the benefits to which they are entitled, and take all necessary action to make that borrower whole. For example, if a borrower claims that their qualifying payment count is inaccurate, and upon review ED determines that the count is accurate within the program rules because the borrower had periods of deferment or forbearance that are ineligible for PSLF, ED should then investigate whether those periods were the result of servicer steering. Where steering—or other misconduct that harms a borrower and deprives them of their statutory rights—is identified, ED must use its existing authority to settle, compromise, and modify accounts to make that borrower whole.⁶

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. This can be accomplished through additional scrutiny during reconsideration, with automatic relief provided where appropriate. There is no need for additional action by the borrower or to obtain their approval, especially given that the filing of a reconsideration claim is evidence of the borrower's desire to have their loan discharged.

6. ED must ensure that reconsideration can be used both for borrowers who have satisfied all PSLF requirements and those who are still building credit toward forgiveness.

It is important that two types of PSLF-seeking borrowers have access to reconsideration: borrowers who have 120 or more qualifying payments and are applying for their loans to be discharged and those who are still accruing credits but regularly file paperwork to update their qualifying payment count. For the former, reconsideration may result in an accurate count and the entirety of the borrowers' remaining federal student loans being discharged. For the latter, reconsideration is a critical litmus test that tells the borrower whether a servicer review was accurate and if they are on track for loan forgiveness or need to reassess their job, loan type, or payment plan. Unfortunately the very need for reconsideration is evidence enough that the regular servicer review is not always sufficient.

ED must make clear that reconsideration is open to any borrower who has received any adverse or inaccurate determination about their PSLF status. Further, if a borrower receives an

⁶ See 20 U.S.C. § 1082(a) *et seq.*

inaccurate servicer determination but is not close to reaching the 120 qualifying payments required for discharge, it would be nonsensical to leave them without recourse until they accrue 120 months of otherwise eligible months of service. However, ED's focus on "denials" in its request for comments could be interpreted to limit reconsideration to borrowers who have been denied PSLF, excluding those who have received an accurate count but no ultimate denial. We therefore urge ED to make clear in its program design and communications that any borrower who has received an adverse determination at any point in seeking PSLF loan forgiveness may avail themselves of reconsideration.

Conclusion

In creating a reconsideration process, ED is acknowledging past inadequacies with the administration of the PSLF program. The principles discussed in this letter, if adopted, would help protect against reconsideration from incorporating the very failings that it seeks to remedy.

Sincerely,

Student Borrower Protection Center
American Association of University Professors (AAUP)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Center for Responsible Lending
Communications Workers of America (CWA)
Debt Collective
Equal Justice Works
International Association of Fire Fighters (IAFF)
International Federation of Professional and Technical Engineers (IFPTE)
National Association of Social Workers (NASW)
National Education Association (NEA)
Service Employees International Union (SEIU)