



March 12, 2024

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

VIA ELECTRONIC SUBMISSION

RE: “Solicitation for Public Comments on Joint Consolidation Loan Separation Application” (Docket No.: ED-2024-SCC-0005)

Dear Secretary Cardona:

The Student Borrower Protection Center (SBPC) appreciates the opportunity to comment on the U.S. Department of Education’s (ED or the Department) steps to implement the Joint Consolidation Loan Separation Act (JCLSA or the Act) by developing an Application.¹ SBPC commends the Biden Administration for its continued dedication to using its authority to deliver the promise of student debt relief to millions of borrowers. However, Joint Consolidation Loan borrowers have largely been excluded; we therefore urge the Department to implement the Act quickly and to the fullest extent possible. Below we have outlined a list of actions the Administration must take in order to finally deliver on the separation of Joint Consolidation Loans.

I. Background

Joint Consolidation Loans (JCL) are ineligible for the majority of loan repayment and relief programs. As a result, most of these borrowers have been stuck with their loans for over 20 years without access to the affordable payment plans or federal cancellation programs that are currently in place. The JCLSA was enacted in October 2022 in order to permit JCL borrowers to

¹ U.S. Dep’t of Educ., *Solicitation for Public Comments on Joint Consolidation Loan Separation Application* (Docket ID ED-2024-SCC-0005), 89 FR 2217 (Jan. 12, 2024).



separate their loans from their current or former spouses.² The Act allows these borrowers to separate their JCL's into new individual Direct Consolidation Loans, as well as gain access to federal repayment and relief programs for which they would otherwise not be eligible.

Despite the direct language of this Act, there has yet to be any action taken to implement it in over a year. It is likely that borrowers, including those who would have their loans cancelled if they could simply separate them, will be required to make years of payment on these debts before receiving the relief that Congress intended.

It is vitally important that the Department implement this law as swiftly and efficiently for borrowers as possible. This will require the Department to simplify the proposed application and streamline the review process. Borrowers need plain language descriptions of what is required. The Department must also ensure that servicer misconduct cannot derail or delay the process of borrowers receiving the relief they are entitled to under the law.

II. *Recommendations for Measures ED Should Take to Protect Borrowers During the Application Process*

A. ED Should Ensure That All Borrowers Who Submit Applications, Whether Joint or Separate, Are Processed Without Significant Delay or Reliance on Their Co-Borrower

If a borrower³ applies for loan separation jointly, but their co-borrower does not submit their own application within a specified period of time, ED should consider the first borrower to have applied separately and should process their application. This is both to ensure that no application languishes in administrative limbo while awaiting the co-borrower's application, and to ensure that the Act's intent to help JCL borrowers is faithfully implemented.

Section 4 of the proposed application permits borrowers to apply for and receive a separate loan without their co-borrower's simultaneous application, but only if the applying borrowers has experienced economic abuse or an act of domestic violence as defined by the Violence Against Women Act (VAWA) of 1994,⁴ or if they cannot reach or access their co-borrower's loan

² Joint Consolidation Loan Separation Act, Public L. No. 117-200, 136 Stat. 2219 (2022) (codified as amended at 20 U.S.C. § 1087e(g)).

³ We use "borrower" throughout this comment to refer to the person completing the application, and "co-borrower" to refer to the other person responsible for the JCL. JCL's have different definitions of "borrower" and "co-borrower" for borrowers listed on the loan agreement. ED should use the definitions currently in place, or define these two terms for the purposes of this application to prevent borrower confusion.

⁴ 34 U.S.C. § 12291.



information. There are additional foreseeable circumstances in which a borrower applying jointly nonetheless meets the requirements for, and would benefit from, a separate application. In these instances, ED should process a borrower's application without the co-borrower's application.

VAWA defines economic abuse as behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which the person is entitled.⁵ This includes using coercion or manipulation to restrict another person's access to money, assets, credit, or financial information, or exerting undue influence over a person's financial and economic behavior or decisions including forcing default on joint or other financial obligations.⁶

If, for example, a co-borrower purposefully delays filing their application after a borrower has submitted their joint application, that could be considered a restraint on the borrower's access to affordable loan payments and/or cancellation and would have the effect of exerting undue influence over the borrower's financial decisions. ED should consider this to be a form of economic abuse.⁷ Although a borrower could opt to file a separate application initially, if the circumstances that necessitate separate applications only arise in the course of seeking joint applications, the borrower may not do so. Additionally, borrowers seeking separation may not identify as having experienced economic abuse, even if their circumstances meet the statutory definition, and so may seek joint separation, even if their co-borrower is not cooperative.

To ensure that one co-borrower's inaction does not unduly delay an applying borrower's application, after a specified period of time, such as 30 days, ED should process the submitted joint application as if it were a separate application, on the basis the applying borrower is experiencing economic abuse. This a reasonable inference given the borrower's affirmative request for separation, as demonstrated by their application, and given the effect of the co-borrower's inaction, specifically restricting the applicant's ability to access affordable payment and debt cancellation.

The Department can also convert a single joint application into a separate application on the grounds that doing so is in the best financial interest of the federal government, which is an independent basis of authority for separation applications under the Act.⁸ Although ED has not specified what it would do with a joint application for which no corresponding co-application is filed, it is likely the application would either be held indefinitely or denied at some point on the

⁵ 34 U.S.C. § 12291(13).

⁶ *Id.*

⁷ 34 U.S.C. § 12291(13).

⁸ 20 U.S.C. § 1087e(g)(2)(C)(ii)(II).



basis of the missing co-application. In either instance, it is in the government’s best fiscal interest to treat the filing as a separate application. First, a borrower with a pending application is reasonably likely to follow up and inquire about the status of their application. Each touch point with a borrower by a servicer costs the government. If the application is denied because there is no co-application, then the borrower will merely re-file their application as a separate application, which is the difference of one check box. Here, too, the rejection of the initial application and subsequent processing of the new separate application costs money. It is therefore in the government’s best fiscal interest to reduce unnecessary paperwork processing and borrower communication by deeming joint applications without corresponding co-applications as separate after a specified period of time.

The Department can mitigate any concerns it has about non-filing co-borrowers’ rights by sending them a notice upon receipt of the initial joint application. This would serve to prompt the submission of the co-application and should pose no privacy or safety concerns, since if the initial borrower had reason to fear their co-borrower, they would have applied separately.

B. Borrowers Should Be Placed in Administrative Forbearance While Their Application is Being Processed

Borrowers should not be required to continue making payments on their loans while their application is being processed unless the borrower requests to do so.⁹ This will cause further harm to the borrowers who face unaffordable payments while they await approval or denial of their application, including borrowers who could qualify for a low- or zero-dollar payment under Saving on A Valuable Education (SAVE) or for total cancellation of their loan. ED, or the holder of their loans, should automatically place borrowers who apply for separation into administrative forbearance until the processing of the application is completed and a new Direct Consolidation Loan is originated. The Public Service Loan Forgiveness (PSLF) regulations already count this type of processing forbearance toward cancellation,¹⁰ and once in effect, the Income-Driven Repayment (IDR) regulations will, too.¹¹ Therefore, an administrative forbearance would not have the unintended consequences of delaying borrowers’ time to cancellation. ED should instruct the servicers who hold JCL accounts to place these borrowers into forbearance once their application is received.

⁹ “While we are processing your application, continue making payments on your joint consolidation loan (unless you have been granted a deferment or forbearance) until you receive written notification that your joint consolidation loan has been separated into a new Direct Consolidation Loan.” U.S. Dept’t. Of Educ., Instructions for Completing the Application/Promissory Note, 3 <https://www.regulations.gov/document/ED-2024-SCC-0005-0003>.

¹⁰ 34 CFR § 685.219(c)(2)(v)(H); 34 CFR § 685.205(b)(9).

¹¹ U.S. Dep’t of Educ., Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program (Docket ID ED-2023-13112), 88 FR 43820 (July 10, 2023).



III. *ED Must Simplify the Application to Separate a Joint Consolidation Loan to Facilitate Borrower Completion*

The primary goals of the proposed revisions to the Combined Application to Separate a Joint Consolidation Loan are to reduce the burden on borrowers and ensure swift implementation and processing. We offer the following recommendations about the overall separation process before commenting specifically on the draft form, and urge ED to incorporate these comments into both the form and the instructions, as appropriate:

- **ED must make clear at the outset who must complete the form.** ED must add plain language instructions to the beginning of the application that states that both borrowers must complete separate applications, even if applying jointly. This instruction does not appear until the fifth page of the proposed application, and appeared to be counterintuitive to JCL borrowers we spoke with. Borrowers need to know exactly who has to fill out the form, and when there are exceptions to whether the co-borrower must file their own form, prior to starting section 1 of the application.
- **ED should remove unnecessary or duplicative information.** At the outset of the application, ED should only require necessary information from borrowers. The length of the application can be a barrier to completion for many borrowers—especially given the number of documents that must accompany this form. Therefore, for this program, we recommend that all unnecessary or duplicative information be removed.
- **ED must offer an online application.** ED has indicated it has no intention to create an online application,¹² however, an online application will undoubtedly aid in streamlining the process of separating these loans. An online application would also facilitate borrowers' enrollment in IDR and PSLF, as they could request these programs and the separate loans, in one single submission. The Department's justification for not creating an online application is that the cost was high relative to the low number of JCL borrowers. However, paper applications are subject to more human and processing errors, which can be costly to address. Although it may be expensive, it would be easier for borrowers to complete an online application, with an option to print and mail the paper application, if necessary.
- **ED should establish a phone line or email to specifically address JCL borrowers' questions.** ED should ensure clear communication with this group of borrowers by

¹² U.S. Dep't of Educ., Supporting Statement for Statement for Paperwork Reduction Act Submission, 3, <https://www.regulations.gov/document/ED-2024-SCC-0005-0003>.



establishing a phone line or email to specifically address these borrowers' questions as they come in. Due to the limited number of borrowers affected and the specialized nature of this legacy loan portfolio, ED should anticipate the borrowers will initially experience complications and confusion while applying to have their JCL separated. It would benefit borrowers, servicers, commercial FFEL holders, and the Department to create a specialized hotline or online portal for borrowers to turn to with questions, rather than requiring all servicers to develop paper resources, call scripts and staff training, and dedicated website materials.

- **ED should translate the application into multiple languages.** An issue that stood out immediately was that the forms were published in English only. Executive Order 13166 establishes a commitment to improving accessibility to federal programs for people with limited English proficiency by creating a system where those persons can meaningfully access the programs or services provided by the agency.¹³ Currently, the application is only available in English, and there has been no indication that it will be published in any other language so that those with limited English proficiencies are able to fill it out. This is imperative for borrowers who are not native English speakers, yet need to seek separation of their joint consolidation loans. There should be at least one other language, such as Spanish, included in the final publishing of this application.
- **ED should establish a concrete timeline to process the form and provide a determination on its approval.** JCL borrowers have been waiting long enough. Another indefinite delay will continue to cause financial and emotional harm to borrowers. As the application currently reads, these borrowers are required to pay on these joint loans while ED or its contractors process the application for separation. Furthermore, while these forms are being processed, these borrowers are missing out on beneficial federal programs like the PSLF Waiver, the IDR Account Adjustment, and access to the more affordable SAVE repayment plan. While we appreciate ED's commitment to providing borrowers with the IDR Account Adjustment if they are unable to split their loans before the program's end,¹⁴ it is still critical that ED process these forms quickly and communicate a clear timeline for processing to these borrowers.

¹³ Exec. Order No. 13166, 65 C.F.R. 159 (Aug. 16, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>.

¹⁴ "What if I have a joint spousal consolidation loan and can't split this loan before the IDR payment count adjustment?" Fed. Student Aid, Payment Count Adjustments Toward Income-Driven Repayment and Public Service Loan Forgiveness Programs, <https://studentaid.gov/announcements-events/idr-account-adjustment>.



IV. *Simplifying and Clarifying the Combined Application to Separate a Joint Consolidation Loan and Direct Consolidation Loan Promissory Note*

In addition to the comments above, which apply to the overall JCLSA implementation, we offer the following specific comments on the Department's proposed application. Here, too, we emphasize simplicity and clarity to facilitate borrower completion.

Section 1: Borrower Information

Remove the driver's license state and number. It is duplicative to ask for this information when ED asks for the borrower's social security number in the line above this response. Borrowers should be identifiable in the National Student Loan Database System through full name, date of birth, and social security number. Because ED is not providing an online option to complete the application, which could provide more security for this type of sensitive information, it should not require borrowers to submit more personal private information than is absolutely necessary to process the application.

Also, the employer information should be removed unless ED will use this information to quickly determine a borrower's PSLF eligibility.

Section 2: Co-Borrower's Information

Requiring a borrower to enter their co-borrower's social security number could pose an unnecessary, and in certain circumstances, an insurmountable, administrative challenge. The Department should consider factors such as if the borrowers are no longer in contact with each other, and the borrower submitting the application does not have access to such information. This is particularly burdensome for borrowers filing separately because they may have experienced domestic or economic abuse by their co-borrower. The co-borrower's full name and date of birth should be sufficient to identify them. Therefore, ED should make this information optional for those who do not have it.

Section 3: Reference Information

The instructions for this section should include the entire instructions that are listed on page 2 of the separate instructions document. The borrower should be made clear **within the application** that the listed reference will not be responsible for the loan. These details are not clear in the main application document on which the borrower will be focused.



Section 4: Joint or Separate Application to Separate a Joint Application

Move The Definition of “Current Outstanding Balance Of Joint Consolidation Loan”

The definition of “current outstanding balance of joint consolidation loan” should be moved to the top of this section after “**CHECK ONLY ONE.**” It is a duplicative statement of the later definition on page 5, which should be removed. It is best to define the term fully in the first instance of its use. The definition should make clear to the borrower how their current outstanding balance is being determined the first time they encounter the term.

Remove Box #19 for Simplicity

Box #19 should be removed and the option to separate loans based on a divorce decree, court order, or settlement agreement should be included as an additional selection within box #18.

Clarify How The Balance For Separated Loans Will Be Calculated

Lastly, ED should clarify the math used for determining the amount of separate loans attributable to the borrower-applicant that are not determined by a divorce decree, court order, or settlement agreement. As written, the language describing how the borrower’s separate loans will be calculated is confusing: “My new individual Direct Consolidation Loan will be for an amount equal to my portion of the joint consolidation loan. If I check Item 18, my portion will be determined by multiplying the current outstanding balance of the joint consolidation loan (see below) by the percentage of the original outstanding balance of the joint consolidation loan that was attributable to my individual loans that were repaid by the joint consolidation loan when the joint consolidation loan was made.”

The form should instead say: “If I check item 18 and do not include a divorce decree, court order, or settlement agreement, my new individual Direct Consolidation Loan will be equal to the share of the joint consolidation loan’s current outstanding balance that is proportional to my original loans that the joint consolidation loan was used to repay. For example, if my co-borrower and I each had \$10,000 in individual loans that were repaid using a joint consolidation loan for \$20,000, my new Direct Consolidation Loan will be equal to 50 percent of the current outstanding balance of the joint consolidation loan. If I select the box to have my loans separated based on a divorce decree, court order, or settlement agreement, then my loans will be separated based on the document(s) included.”

Section 5: Repayment Plan Selection

The application states that borrowers can go to studentaid.gov to apply for an IDR repayment plan, but it is unclear how the borrower should connect the online request to their paper application to separate their loans. ED should provide clear instructions for how to do this.



Section 6: Borrower Certifications, Authorizations, and Understandings

On page five under part B, borrowers applying jointly must submit the same application, select the same joint application option in section 5, and if they seek to divide the loan balance based on a divorce decree, court order, or settlement agreement, they must provide the same documentation as the other. This is duplicative and could result in delays or economic abuse, as discussed in section II. A. above. ED should add the following language and adopt the corresponding policy, discussed above, “If I selected to have my loans separated based on the same divorce decree, court order, or settlement agreement, and my co-borrower does not submit the same document(s) within 30 days, then the servicer will proceed with my application separately as a form of economic abuse, as defined by VAWA.”

Section 8: Note Terms and Conditions/Borrower’s Rights and Responsibilities (BRR)

ED Must Maintain Parent PLUS Borrowers’ Options During The Slow JCLSA Rollout

On page 12 there is a section that reads: “If you apply to separate a joint Direct Consolidation Loan or Federal Consolidation Loan into a new Direct Consolidation Loan on or after July 1, 2025, you may not repay the new Direct Consolidation Loan under the SAVE Plan if your portion of the joint consolidation was attributable to one or more parent PLUS loans.”

If ED delays the implementation of the Act, then JCL borrowers with Parent PLUS loans could miss out on enrolling in the SAVE plan. ED should either commit to moving swiftly to implement the Act into this Note or commit to extending this deadline if, by the end of 2024, ED does not believe the Act will be implemented by this deadline. Borrowers should not miss out on more affordable repayment plans because of ED’s delay in implementing the application.

ED Should Ensure Applicants’ Right To Full PSLF Payment Credit

On page 15, there is a statement that PSLF payment credit will be based on the weighted average of qualifying payments made before consolidation. ED should instead place in the note, or at least in the instructions, that the rules used for the PSLF Waiver and IDR Account Adjustment will apply to this program so that these borrowers can receive credit under both programs due to the delay in implementing the Act.

If the PSLF Waiver or IDR Account Adjustment rules govern how PSLF or IDR payments are credited to these borrowers, they will receive as much time toward cancellation as their oldest loan, including certain periods of deferment or forbearance.¹⁵ Due to ED’s delay in implementing the JCLSA, however, JCL borrowers could miss the PSLF Waiver deadline and

¹⁵ Fed. Student Aid, Payment Count Adjustments Toward Income-Driven Repayment and Public Service Loan Forgiveness Programs, <https://studentaid.gov/announcements-events/idr-account-adjustment>.



will not meet the current deadline to consolidate their loans and benefit from the Account Adjustment.

ED has committed to preserving JCL borrowers' ability to benefit from the PSLF Waiver and the IDR Account Adjustment in certain instances.¹⁶ The Direct Consolidation Loan Master Promissory Note should include language that codifies this commitment. If that is not possible, then the Application's instruction should include such language.

V. *Streamlining the Instructions for Completing the Combined Application/Promissory Note*

The instructions being in a separate document is counterproductive and forces the borrowers to flip between two different documents in order to fill out one of them. This document should be removed, and replaced with clear and simplified instructions throughout the actual application at the top of each section, where necessary, so that borrowers only have to refer to the top of the page instead of to another document entirely. Additional information to include on the first page of the instructions would be the lines about using blue or black ink, how to enter dates, and the bolded line about providing complete information. If ED keeps the instruction packet, it should include sample loan balances to illustrate how the loans could be separated, examples of when one can apply separately for clarity, or brief explanations for why ED requires certain information like one's driver's license number. This packet should not include the instructions that are vital for completing the form.

VI. *ED Should Reduce The Administrative Burden Faced By Borrowers Seeking To Separate Their Joint Consolidation Loans*

ED should take a more holistic approach to determining the administrative burden that this process will have on borrowers by taking into account the learning costs, psychological costs, and compliance costs.¹⁷ It is important to acknowledge these costs and the additional harm they would cause at every point in the development of this process to better determine how it can be made more efficient and simple for the borrowers to navigate. Learning costs are the costs applicants face in learning about a program and its embedded complexities, including if they are eligible, what the benefits of the program are, how to navigate the application process, and its various rules in order to maintain eligibility. Psychological costs are the costs that applicants and

¹⁶ Fed. Student Aid, Joint Consolidation Loan Separation News and Updates, <https://studentaid.gov/announcements-events/joint-consolidation-loans>.

¹⁷ Donald Moynihan, Pamela Herd, & Hope Harvey, "Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions," *Journal of Public Administration Research and Theory* 25 (1) (2015): 43–69, available at <https://doi.org/10.1093/jopart/muu009>.



participants face when participating in unpopular programs and the stigma they carry, including the stress arising from the programs' processes. Compliance costs are the costs applicants and participants face in the time it takes to complete applications and recertifications, provide documentation of their eligibility, and respond to discretionary demands to keep their benefits.

As the application is currently drafted, we have heard from borrowers with Joint Consolidation Loans that it is confusing, even in regards to simple questions such as, "Who needs to complete this form?" and borrowers will likely have trouble completing it in one sitting without calling and waiting on hold to speak with servicers or seeking outside assistance. This adds to the learning cost that it will take to complete the application, and will undoubtedly amount to higher costs for student loan servicers, borrowers, and ED staff. For example, some borrowers may have to submit a divorce decree, court order, or settlement agreement which means they may have to go to the courthouse to obtain copies of these documents, which costs more money and more time, but is necessary to complete the form. This would add to the learning and compliance cost it takes to complete the form and should be considered by ED when developing the form. Since the application is currently in paper format only, borrowers will also have to mail the applications with the supporting documents to ED, or one of its contractors, which will pose additional burdens on borrowers who need to take additional security measures to make sure it is delivered safely.

The issues pointed out above all contribute to these costs and should be factored into ED's determination of the best way to disseminate the form. Borrowers will bear the brunt of any of these costs, so ED has a duty to make sure that they are as minimal as possible. ED should consider the time it will take to learn the program, the psychological cost that these borrowers have to endure while waiting, and not being a priority, and the cost it will take to comply with the application process (e.g. completing the application, obtaining supplemental documents when necessary). Therefore, as ED finalizes the application, it should prioritize simplification by eliminating unnecessary reporting, and other requirements wherever possible, while additionally using this application and existing administrative records to automatically enroll individuals into other student debt relief programs to minimize the burden on borrowers.

As the Department continues to revise the application, it should keep in mind that these borrowers are harmed each day they are tethered to their co-borrower's loans. This process should be expedited to ensure that these borrowers receive separation as well as access to affordable repayment plans, and cancellation programs that are currently in place. Since the Department is not automatically separating borrowers' loans, it should prepare an outreach plan that encourages and educates as many borrowers as possible about the program and the process. The Department should also ensure that any separation denials include clear grounds for denial,



STUDENT BORROWER
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information on borrowers' rights, and opportunities to appeal the denial or to reapply.

We would be happy to discuss this content and ED's ongoing work related to the JCLSA. Thank you for your time and consideration.

Sincerely,

Student Borrower Protection Center

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