



STUDENT BORROWER  
PROTECTION CENTER



# **BROKEN PROMISES**

**How the Department of Education's Failures  
and Industry's Abuses Deny FFEL Borrowers  
Public Service Loan Forgiveness**

December 2020

# Table of Contents

<b>Executive Summary</b>	3
<b>About this Report</b>	6
<b>Introduction</b>	8
<b>A Troubling Track Record for FFEL Borrowers in Public Service</b>	11
<b>Part 1: Breakdowns Stymied Public Service Workers from the Start</b>	11
<b>Part 2: The Conflicts of Interest at the Heart of PSLF</b>	15
<b>Part 3: Exposing Conflicting Claims: Demanding Answers for Public Service Workers</b>	18
<b>Part 4: Why Public Service Workers are Being Denied Their Right to Public Service Loan Forgiveness—Alleged Illegal Industry Practices</b>	25
<b>Findings &amp; Recommendations</b>	30
<b>Conclusion</b>	34
<b>Appendix</b>	35

## Executive Summary

- The Public Service Loan Forgiveness (PSLF) program was created by Congress in 2007 to provide public service workers with student loan debt relief in exchange for a decade of service to their communities. Unfortunately, since its inception, the program has been mishandled and undermined by the Department of Education and its contracted loan servicers. As of September 2020, less than two percent of PSLF applicants have secured forgiveness through the Department.
- In 2007 when PSLF was created, there were two types of federal student loans—those directly originated by the Department of Education (Direct Loans) and those guaranteed by the federal government but originated by banks and other private-sector creditors through the Federal Family Education Loan Program (FFELP loans). Although a borrower must have a Direct Loan to qualify for PSLF, Congress created a path for all other federal student loan borrowers—including FFEL borrowers—to access PSLF by consolidating their FFELP loans into Direct Loans.
- Unfortunately, for more than a decade, FFEL borrowers have been routinely misinformed about their right to PSLF and the steps necessary to qualify for relief. Data from the Department of Education show at least 70,000 instances where borrowers have been knocked off track after being unable to certify that they have the right type of loan, as of September 2020. These data do not reflect the potentially hundreds of thousands of public service workers with FFELP loans who have never indicated to the Department of Education that they intend to apply for PSLF but nevertheless intend to do so in the coming years.
- At the root of the widespread breakdowns faced by FFEL borrowers are the companies that service and manage FFELP loans. For creditors, participation in the FFEL Program continues to be extremely profitable because the government holds the bulk of the credit risk, while creditors earn significant returns on these loans in the form of interest charged to borrowers. But when FFEL borrowers consolidate into a Direct Loan, student loan companies are denied access to years of future revenue from these borrowers, creating misaligned economic incentives for companies to work against the interests of FFEL borrowers.
- To better understand the relationship between the FFEL industry and borrowers who might be eligible for PSLF, in December 2018, the American Federation of Teachers (AFT) and the Student Borrower Protection Center (SBPC) launched an exhaustive investigation of the Public Service Loan Forgiveness

program, issuing dozens of requests under federal and state open records laws for records and communications related to the guidance provided to the FFEL industry.

- In response to public records requests, the Department of Education confirmed that “FSA has not communicated to FFEL Program participants how they should communicate with borrowers about Public Service Loan Forgiveness.” Correspondence with multiple state-backed student loan companies that have previously participated in some capacity in the FFEL Program confirmed this finding.
- In the absence of guidance and regulation from the Department of Education, the student loan industry engaged in a years-long pattern of abuse of FFEL borrowers seeking PSLF, as detailed in hundreds of consumer complaints and numerous court filings:
  - Alleging that servicers affirmatively represent that borrowers are on track to earn PSLF, despite having ineligible loans;
  - Alleging that servicers never advised borrowers to consolidate their FFELP loans into a Direct Consolidation loan to become eligible for PSLF; and
  - Alleging that when attempting to consolidate their loans to become eligible for PSLF, FFELP loan holders and servicers create unnecessary and impermissible delays.
- Policymakers and law enforcement officials must take immediate action to address the harms inflicted through abuses by FFEL creditors and servicers and mismanagement by the Department of Education. These actions include the following:
  - The Secretary of Education should ensure that past and present borrowers with loans made through the FFEL Program are able to get credit toward PSLF, consistent with the goals of the PSLF program.
  - Congress should fix this flaw in the PSLF program to ensure ED is required to retroactively count all FFEL borrowers’ past payments as qualifying.
  - Law enforcement officials, regulators, and the Department of Education must investigate and audit the FFEL Program, with a focus on evaluating creditors’ and servicers’ handling of borrowers who work in public service.

- The Department's Office of Federal Student Aid must take immediate action to ensure creditors and servicers in the FFEL Program timely certify borrowers' loans as part of the consolidation process and provide relief for borrowers who missed out on months of credit due to improper delays.
  
- The Secretary of Education must provide loan forgiveness on a class-wide basis where law enforcement officials or government audits have documented deception, misrepresentation, or other illegal practices by student loan companies that have denied borrowers with FFELP loans access to PSLF.

# About this Report

The Public Service Loan Forgiveness program was created in 2007 to ensure that Americans are never forced to choose between serving their communities or paying their student loans.<sup>1</sup> The PSLF program is premised on the notion that public service workers with student debt should be entitled to loan forgiveness in exchange for a decade of public service work, enabling workers with qualifying loans to discharge their remaining loan balance after ten years of payments.

The PSLF program provides a critical lifeline to our nation's nurses, teachers, and other public service workers. While our neighborhoods and communities reap the benefit of their service, student loan borrowers in these professions are not compensated commensurately to their private sector counterparts.<sup>2</sup> The promise of financial relief through the PSLF program ensures that these borrowers are not penalized for choosing a path of service to our country.<sup>3</sup> But since its inception, the program has been seriously mishandled by the Department of Education (ED) and its contracted servicers.<sup>4</sup> In fact, the most recent data from the Department of Education indicate that

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<sup>1</sup> See College Cost Reduction and Access Act, Pub. L. No. 110-84 (2007); see also 20 U.S.C. § 1087e(m) (2014).

<sup>2</sup> See, e.g., Keith A. Bender & John S. Heywood, Nat'l Inst. on Ret. Sec., *Out of Balance? Comparing Public and Private Sector Compensation over 20 Years* (2010), [www.slge.org/assets/uploads/2011/12/Out-of-Balance\\_FINAL-REPORT\\_10-183.pdf](http://www.slge.org/assets/uploads/2011/12/Out-of-Balance_FINAL-REPORT_10-183.pdf) [[perma.cc/8NNR-YEW9](https://perma.cc/8NNR-YEW9)] (finding that on average, public sector jobs require much more education than those in the private sector, and wages and salaries of state and local employees are lower than those for private sector workers with comparable earnings determinants); Memorandum from Fed. Salary Council to the President's Pay Agent, Honorable Thomas Perez, Honorable Shaun Donovan & Honorable Beth Cobert (Dec. 14, 2016), <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation16.pdf> [[perma.cc/AJB3-5KB5](https://perma.cc/AJB3-5KB5)].

<sup>3</sup> See 153 Cong. Rec. S9536 (daily ed. July 19, 2007), <https://www.congress.gov/crec/2007/07/19/CREC-2007-07-19-pt1-PgS9534.pdf> [[perma.cc/54KP-ELZS](https://perma.cc/54KP-ELZS)] ("Mr. Kennedy: . . . So we have made this as wide as we could in terms of trying to respond to that sense that is out there in our schools and colleges, in all parts of our country, urban areas and rural areas, to say: Look, if you want to give something back, we are going to make it possible. We are going to give you a greater opportunity for you to go to college, particularly if you are from working families and low-income. We are going to give you a better opportunity to do that."); see also, Dep't of Def., *Information Paper on HR4508, the Promoting Real Opportunity, Success, and Prosperity Through Education Reform (PROSPER Act)* (Jan. 10, 2018), [https://www.insidehighered.com/sites/default/server\\_files/media/Department-of-Defense-on-PROSPER-Act.pdf](https://www.insidehighered.com/sites/default/server_files/media/Department-of-Defense-on-PROSPER-Act.pdf) [[perma.cc/2NGX-V6ZQ](https://perma.cc/2NGX-V6ZQ)].

<sup>4</sup> Avie Schneider, *23 Senators Demand Investigation Into Mismanagement of Student Loan Payment*, NPR (Oct. 29, 2019, 1:13 PM), <https://www.npr.org/2019/10/29/774395247/23-senators-demand-investigation-into-mismanagement-of-student-loan-program> [<https://perma.cc/Q9QW-Q3FN>].

fewer than two percent of borrowers who have submitted PSLF applications—3,469 out of 179,371—have been granted loan forgiveness under the program as of September 30, 2020.<sup>5</sup>

Countless public service workers who shaped their careers and financial futures around PSLF have been failed by broken promises of loan forgiveness.<sup>6</sup> This report is informed by a joint investigation conducted by the American Federation of Teachers and the Student Borrower Protection Center.<sup>7</sup> This report is the latest in a series of publications examining the administration of the PSLF program by the government and its contractors since the program's inception. Through this investigation, the SBPC and AFT have exposed widespread mismanagement and abuse that has denied or delayed millions of public service workers' access to this critical protection.<sup>8</sup>

The following analysis and commentary are informed by responses to nearly two dozen Freedom of Information Act (FOIA) and state open records requests to the U.S. Department of Education and state-backed student loan companies that serve as federal contractors and/or participants in the legacy Federal Family Education Loan Program.<sup>9</sup> This report was also informed by reviewing recent court filings, government reports, government data, and consumer complaints submitted by individual student loan borrowers and published in the Consumer Financial Protection Bureau's (CFPB) public complaint database. Taken together, these sources of information reveal a deeply dysfunctional system created by the federal government's failure to faithfully execute the law as written and industry's efforts to maximize profits at the expense of borrowers' rights.

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<sup>5</sup> *Public Service Loan Forgiveness Data*, Fed. Student Aid, <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data> [<https://perma.cc/8B92-V22R>] (last visited Dec. 14, 2020).

<sup>6</sup> See, e.g., Cory Turner, *Congress Promised Student Borrower a Break. Education Dept. Rejected 99% of Them*, NPR (Sept. 5, 2019, 5:00 AM), <https://www.npr.org/2019/09/05/754656294/congress-promised-student-borrowers-a-break-then-ed-dept-rejected-99-of-them> [<https://perma.cc/8J56-H55G>].

<sup>7</sup> *Keeping the Promise of Public Service Loan Forgiveness*, Student Borrower Prot. Ctr. (Dec. 19, 2018), <https://protectborrowers.org/wp-content/uploads/2020/01/SBPC-AFT-PSLF-Investigation.pdf> [<https://perma.cc/2K7E-XH3F>] (last visited Oct. 21, 2020).

<sup>8</sup> See Student Borrower Prot. Ctr., *Broken Promises: Employer Certification Failure* (Aug. 2020), <https://protectborrowers.org/wp-content/uploads/2020/08/ECF-Failures.pdf> [<https://perma.cc/3KST-NB6L>]; Student Borrower Prot. Ctr., *Broken Promises: The Untold Failures of ACS Servicing* (Oct. 2020), [https://protectborrowers.org/wp-content/uploads/2020/10/Broken-Promises\\_ACS.pdf](https://protectborrowers.org/wp-content/uploads/2020/10/Broken-Promises_ACS.pdf) [<https://perma.cc/WBV4-VE8C>].

<sup>9</sup> See Appendix beginning on page 35.

# Introduction

America is facing a \$1.7 trillion student debt crisis.<sup>10</sup> As Americans struggle to manage historic levels of student debt, the Department of Education and student loan industry abuses have repeatedly denied borrowers' access to programs and protections intended to reduce financial hardship, prevent default, and ensure that student debt does not impose a barrier to economic opportunity.<sup>11</sup>

These abuses have been particularly evident for borrowers trying to access the Public Service Loan Forgiveness program.<sup>12</sup> The first borrowers became eligible to have their debts cancelled under PSLF in 2017, yet this promised debt relief has proven illusory for the vast majority of those public service workers who have petitioned for loan forgiveness. Three years after the first cohort of borrowers expected to see their loans forgiven, fewer than two percent of borrowers who have applied have secured forgiveness under PSLF.<sup>13</sup> In 2018, shortly after the public became aware of the first wave of PSLF denials, Congress attempted to intervene by temporarily expanding the eligibility criteria for PSLF.<sup>14</sup> However, even for those borrowers pursuing this the temporary expansion, rejection rates remain above 94 percent.<sup>15</sup>

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<sup>10</sup> See *Historical Data: Consumer Credit Outstanding (Levels)*, Bd. of Governors of the Fed. Rsrv. Sys., [https://www.federalreserve.gov/releases/g19/HIST/cc\\_hist\\_memo\\_levels.html](https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html) [<https://perma.cc/4CX2-HHYK>] (last visited Dec. 14, 2020).

<sup>11</sup> See, e.g., *Consumer Fin. Prot. Bureau v. Navient Corp.*, No. 17-cv-00101, 2017 U.S. Dist. LEXIS 123825 (M.D. Pa. Aug. 4, 2017); *Massachusetts v. Pa. Higher Educ. Assistance Agency*, No. 1784CV0682, 2018 WL 1137520 (Mass. Super. Ct. Mar. 1, 2018); *Chery v. Conduent Educ. Servs., LLC*, No. 1:18-CV-75, 2020 U.S. Dist. LEXIS 148764 (N.D.N.Y. Aug. 18, 2020).

<sup>12</sup> See *Consumer Fin. Prot. Bureau, Staying on Track While Giving Back: The Cost of Student Loan Servicing Breakdowns for People Serving Their Communities* (2017), [https://files.consumerfinance.gov/f/documents/201706\\_cfpb\\_PSLF-midyear-report.pdf](https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf) [<https://perma.cc/4LNY-KAPJ>]; *Chery v. Conduent*, *supra* note 11; *Massachusetts*, *supra* note 11.

<sup>13</sup> See *supra* note 5. Calculated as the proportion of "Unique Borrowers with PSLF discharges processed" from among all "Unique Borrowers Submitting PSLF Applications."

<sup>14</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348.

<sup>15</sup> See *supra* note 5. Calculated as the proportion of "eligible Temporary Expanded Public Service Loan Forgiveness (TEPSLF) requests" among all TEPSLF requests, itself calculated as the sum of "eligible TEPSLF requests" and "ineligible TEPSLF requests." Readers should note that, as discussed in detail below, TEPSLF does not provide additional relief for borrowers who do not have a qualifying loan. Effective implementation of TEPSLF as currently enacted by Congress would not address the issues central to this report.



Since the launch of this investigation, the SBPC and AFT have obtained thousands of pages of communications that document breakdowns related to the eligibility requirements for PSLF. Previously, our investigation exposed (1) serious problems plaguing to the process through which borrowers certify that they have an eligible employer;<sup>16</sup> and (2) widespread mismanagement and abuse connected to the original Direct Loan servicer, a company known as Affiliated Computer Services (ACS).<sup>17</sup>

**Borrowers must satisfy four requirements to earn loan forgiveness through the PSLF program. To qualify, they must have:**

- 1) The right type of loan**
- 2) The right type of payment plan**
- 3) The right number of qualifying payments**
- 4) The right type of employer**

The following report highlights a portion of the documents and records obtained through our investigation specifically related to the first eligibility requirement: certifying the right type of loan. As described in detail below, government data reveals at least 70,000 instances where borrowers have been knocked off track after being unable to certify that they have the right type of loan.<sup>18</sup>

This report takes a detailed look at the breakdowns affecting these borrowers—borrowers who, evidence suggests, owe a specific type of older federal student loan. These older loans were made through the now-defunct Federal Family Education Loan Program (FFEL or FFELP), a program through which banks and other private lenders once made student loans backed by the federal government.<sup>19</sup>

For borrowers working in public service, receiving timely and accurate information about the need to turn these older loans into the right type of loan (known as “consolidating”) is essential, as each month spent making payments toward a FFELP loan is a month that does not count toward PSLF.<sup>20</sup> When borrowers are not informed

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<sup>16</sup> See Broken Promises: Employer Certification Failure, *supra* note 8.

<sup>17</sup> See Broken Promises: The Untold Failures of ACS Servicing, *supra* note 8.

<sup>18</sup> For further discussion, see Part 1 at 11.

<sup>19</sup> See 20 U.S.C. § 1071 et seq.; Higher Education Amendments of 1986, Pub. L. No. 99-498.

<sup>20</sup> See Consumer Fin. Prot. Bureau, *supra* note 12.

about the need to consolidate older federal student loans until months, years, or a decade after they enter repayment, the resulting financial costs can be catastrophic—saddling borrowers with tens or hundreds of thousands of dollars in debt that would have otherwise been forgiven.<sup>21</sup>

This report seeks to expose the barriers these borrowers continue to face while trying to access PSLF. Our investigation uncovered never-before-seen evidence that, for more than a decade, the U.S. Department of Education has failed to direct the companies that own and service these older loans to work with borrowers who have a right to pursue PSLF. At no point in the past decade—even as tens of thousands of these borrowers applied for and were rejected from PSLF—did ED direct these firms to provide borrowers with basic information about their PSLF eligibility. In this vacuum, as described in detail in this report, the student loan industry has engaged in and continues to deploy sloppy and possibly unlawful practices related to the servicing of older federal student loans owed by borrowers working in public service.<sup>22</sup>

To better understand how the federal government allowed potentially millions of dedicated public service workers to spend years making payments on the wrong type of loan, the SBPC and AFT sought out any and all correspondence or guidance related to PSLF between the Department of Education and student loan companies participating in the FFEL Program. Separately, we used state open records laws to seek out all records related to PSLF maintained by the state agencies that once played a key role in the FFEL Program.

**Government data reveals at least 70,000 instances where borrowers have been knocked off track after being unable to certify that they have the right type of loan.**

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<sup>21</sup> *Id.*

<sup>22</sup> For further discussion, see Part 4 at 24.

# A Troubling Track Record for FFEL Borrowers in Public Service

## Part 1: Breakdowns Stymied Public Service Workers from the Start

In 2007, Congress created the PSLF program to allow student loan borrowers who make ten years of payments while working in public service to have the remainder of their student loans forgiven.<sup>23</sup> Congress designed the PSLF program to be available to all student loan borrowers with Direct Loans—a type of federal student loan originated directly by the Department of Education. In July of 2007, Senator Ted Kennedy detailed the importance and the breadth of the program:<sup>24</sup>

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**“So we have made this as wide as we could in terms of trying to respond to our sense that is out there in our schools and colleges, in all parts of our country, urban areas and rural areas, to say: Look, if you want to give something back, we are going to make it possible. We are going to give you a greater opportunity for you to go to college....”**

**-Senator Ted Kennedy  
Prior to the Passage of PSLF, July 19, 2007**

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At the time of the program’s creation, however, the majority of student loans in existence were Federal Family Education Loan Program loans—a different type of federal student loan made by banks and other private lenders and guaranteed by the federal government. While borrowers with FFELP loans were not immediately eligible for

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<sup>23</sup> See *supra* note 1.

<sup>24</sup> See 153 Cong. Rec. S9536 (daily ed. July 19, 2007), <https://www.congress.gov/crec/2007/07/19/CREC-2007-07-19-pt1-PgS9534.pdf> [<https://perma.cc/54KP-ELZS>].

PSLF, Congress explicitly created a path for them to become eligible: borrowers could consolidate their FFELP loans into Direct Loans in order to pursue PSLF.<sup>25</sup>

Over a decade has passed since the last FFELP loan was made to a student loan borrower.<sup>26</sup> However, as of September 2020, 12 million FFEL borrowers still owe \$246 billion in student debt, including 6.1 million FFEL borrowers who owe \$160 billion to private-sector creditors and 5.8 million who owe \$86 billion in FFELP loans owned by the Department of Education.<sup>27</sup> Further, hundreds of thousands of additional borrowers who once borrowed FFELP loans still owe billions of dollars in federal student loans made directly by the Department of Education (Direct Loans) to refinance these older loans.<sup>28</sup>

The intersection between the FFEL Program and PSLF is simple: when Congress created PSLF, it limited access to loan forgiveness to borrowers with only one type of federal student loan, known as a federal Direct Loan.<sup>29</sup> At the same time, Congress also provided borrowers with all other types of federal loans, including FFELP loans, the right to refinance their loans with a new Direct Consolidation Loan, ensuring that any future payments could count toward PSLF. After 10 years of qualifying payments, these new Direct Consolidation Loans would be

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<sup>25</sup> See Consumer Fin. Prot. Bureau, *supra* note 12.

<sup>26</sup> See Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform 16 (2015), [https://files.consumerfinance.gov/f/201509\\_cfpb\\_student-loan-servicing-report.pdf](https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf) [<https://perma.cc/8JHR-PZRK>].

<sup>27</sup> In March 2020, Congress passed the CARES Act to provide payment relief amid the COVID-19 pandemic to all borrowers with federally held loans. Borrowers with older FFELP loans saw two different outcomes: if a borrower happened to have FFELP loans that were bought back by the government, they saw their payment obligation drop to zero. But if a borrower's FFELP loans continued to be held by private creditors, there was no government sanctioned relief. See Tariq Habash, *The CARES Act Leave Behind Millions of Student Loan Borrowers*, Student Borrower Prot. Ctr. (Mar. 27, 2020), <https://protectborrowers.org/the-cares-act-leaves-behind-millions-of-student-loan-borrowers/> [<https://perma.cc/E57Z-LR65>]. Statistics are based on the SBPC's analysis of U.S. Department of Education administrative data as of September 30, 2020. See U.S. Dep't of Educ., Federal Student Aid Portfolio, <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls> [<https://perma.cc/KT65-RYNU>].

<sup>28</sup> See, e.g., U.S. Dep't of Educ., Federal Student Aid Annual Report 2012 (2012), <https://www2.ed.gov/about/reports/annual/2012report/fsa-report.pdf> [<https://perma.cc/7DFT-YSYX>] ("During FY 2012, the Department offered a short-term initiative, Special Direct Consolidation Loans (SDCL) to assist eligible borrowers in managing their debt by making one payment to one entity. Eligible borrowers had to have at least one loan owned by the Department and one commercially-held FFELP loan in order to qualify for this consolidation opportunity. This initiative, which began in January 2012 and ended June 30, 2012, disbursed more than \$13 billion."); see generally Consumer Fin. Prot. Bureau, Annual Report of the CFPB Student Loan Ombudsman (2015), [https://files.consumerfinance.gov/f/201510\\_cfpb\\_annual-report-of-the-cfpb-student-loan-ombudsman.pdf](https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf) [<https://perma.cc/2HLLK-33NJ>].

<sup>29</sup> College Cost Reduction and Access Act, Pub. L. No. 110-84 (2007).

eligible to be forgiven under PSLF.<sup>30</sup> Public service workers' right to consolidate is an entitlement under the Higher Education Act and was put in place at the time that PSLF was created.<sup>31</sup> Since the earliest days of the PSLF program, borrowers with FFELP loans have depended on the student loan companies managing these loans to explain these rights.<sup>32</sup>

In 2017, the PSLF program passed the ten-year mark, thereby allowing the first cohort of borrowers who had been making payments while working in public service to apply for forgiveness. For the preceding decade, these borrowers were told to turn to their servicers to make sure they were on the right track to earn loan forgiveness, but the results, as noted above, have been scandalous—**more than 98 percent of all PSLF applicants have been denied loan forgiveness as of September 2020.**<sup>33</sup>

**More than 98 percent of all PSLF applicants have been denied loan forgiveness as of September 2020.**

The PSLF program's failure to serve FFEL borrowers appears to be driving, in part, these shocking headlines. Since 2017, approximately one-in-seven borrowers who applied for PSLF and were rejected (22,541 borrowers or 14 percent of all rejected borrowers) have been denied because they did not have a PSLF-qualifying loan.<sup>34</sup> Moreover, available data indicate that an additional 49,269 borrowers sought to certify that they were working for a public service

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<sup>30</sup> *Id.*; see also *Public Service Loan Forgiveness*, Fed. Student Aid, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service> [<https://perma.cc/QW2D-29Y2>].

<sup>31</sup> *Supra* note 29.

<sup>32</sup> *Vullo v. Conduent Educ. Servs., LLC*, Consent Order (N.Y. Dep't of Fin. Servs. Jan. 4, 2019), [https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104\\_conduent.pdf](https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104_conduent.pdf) [<https://perma.cc/S8T5-YF44>].

<sup>33</sup> *Supra* note 5 (including data from September 2020 PSLF Report). Note this refers to the proportion of borrowers who have applied for PSLF and have not had discharges processed.

<sup>34</sup> For estimate of borrowers rejected for not having a qualifying loan, see *supra* note 5. The Department of Education reports that it had deemed 205,744 PSLF applications as ineligible as of September 30, 2020, and that 14% of these ineligible applications (28,804) were deemed so because the borrower did not have an eligible loan. Assuming that the ratio of borrowers per application for PSLF applicants as a whole as reported by the Department of Education in the same report (0.7825447724) applies to these ineligible applications, we estimate that 22,541 PSLF applicants have been denied for not having an eligible loan. Applying the same ratio of applications to borrowers mentioned above (0.7825447724) to the number of applications that ED reported as having been deemed ineligible in the same PSLF report (205,744), we estimate that 161,004 borrowers have been rejected from PSLF overall. 22,541 is 14 percent of 161,004.

employer, a key step on the path to PSLF,<sup>35</sup> and were unable to do so because these borrowers did not have any PSLF-qualifying loans.<sup>36</sup>

This may only be the tip of the iceberg—these data do not reflect potentially hundreds of thousands of public service workers with FFELP loans who have never indicated to the Department of Education that they intend to

**Potentially hundreds of thousands of public service workers . . . may face denials in the future, encounter delays in eligibility, or never apply because they received inaccurate or ill-timed information about the need to consolidate their FFELP loans.**

apply for PSLF. These borrowers may face denials in the future, encounter delays in PSLF eligibility, or never apply for the program because they received inaccurate or ill-timed information about the need to consolidate their FFELP loans.

As noted above, after reports of exceedingly high denial rates for PSLF, Congress created a temporary expansion of the program, offering loan forgiveness to some borrowers who were originally denied relief under the terms of the original PSLF program. Temporary Expanded Public Service Loan Forgiveness (TEPSLF) made it possible for borrowers to apply for loan forgiveness if they had been making payments under an ineligible repayment plan—but only if they already have the right type of loan. Unfortunately for FFELP borrowers, the

temporary expansion offered no relief.<sup>37</sup>

<sup>35</sup> See *generally* Broken Promises: Employer Certification Failure, *supra* note 8.

<sup>36</sup> For estimate of borrowers rejected for not having a qualifying loan, see *supra* note 5. The Department of Education reports that it had deemed 1,393,468 Employer Certification Forms (ECFs) ineligible as of September 30, 2020, and that 8% of these ineligible applications (111,477) were deemed so because the borrower did not have an eligible loan. The present estimate assumes that the ratio of borrowers per application for ECF applicants overall reflects the ratio reported by the Department of Education as of April 6, 2020 (0.4419680178 borrowers per ECF). see *New Department of Education Data Uncovered by Senator Murray Reveals How the Promise of Public Service Loan Forgiveness is Being Broken in Every State*, Student Borrower Prot. Ctr. (Aug. 17, 2020), <https://protectborrowers.org/pslfdata/> [<https://perma.cc/YZR8-FYMZ>] (hereinafter "PSLF Data, Student Borrower Prot. Ctr."). Accordingly, we estimate that 49,269 borrowers faced the rejection of an ECF for not having an eligible loan. It may be helpful for readers to consider the pipeline of potential PSLF applicants discussed in the remainder of this report as comprised of three broad and potentially overlapping segments. First, we know that more than 22,000 borrowers believed they had completed all of the requisite steps to qualify for PSLF, only to apply for PSLF and have their application rejected based on their loan type. Second, we know that an additional approximately 50,000 borrowers signaled intent to pursue PSLF in the future and were rejected based on their loan type. Lastly, we anticipate that there are additional, unquantified number of borrowers who intend to pursue PSLF, but have never signaled this intent to ED and who do not have a qualifying loan. This report attempts to describe issues affecting one or all of these segments of borrowers.

<sup>37</sup> Cory Turner, *supra* note 6.

## Part 2: The Conflicts of Interest at the Heart of PSLF

Even though the path to obtaining the right type of loan may seem straightforward to a borrower with a FFELP loan, there remains an economic conflict of interest at the center of the consolidation process. Should a student loan company accurately and completely assist public service workers in taking the necessary steps to consolidate, these borrowers will use the proceeds of their new Direct Consolidation Loans to immediately repay their older loans, thereby denying the student loan company access to years of future revenue from these borrowers.<sup>38</sup>

These misaligned economic incentives may deter both creditors and loan servicers from communicating honestly with borrowers about their rights. For creditors, participation in the FFEL Program continues to be extremely profitable because the government holds the bulk of the credit risk, while creditors earn significant returns on these loans in the form of interest charged to borrowers.<sup>39</sup> Similarly, servicing FFELP loans is a major source of revenue for specialty student loan servicers—companies paid by the owners of FFELP loans to manage borrowers' accounts.<sup>40</sup> When borrowers consolidate their FFELP loans into Direct Loans to pursue PSLF, borrowers' loans become part of the federal government's \$1.5 trillion student loan

**Participation in the FFEL Program continues to be extremely profitable because the government holds the bulk of the credit risk, while creditors earn significant returns on these loans. . . .**

<sup>38</sup> Letter from C.E. Andrews, Exec. Vice President, SLM Corp., to Jennifer J. Johnson, Sec'y, Bd. of Governors of the Fed. Res. System (Jan. 18, 2006), [https://www.federalreserve.gov/SECRS/2006/February/20060214/R-1238/R-1238\\_38\\_1.pdf](https://www.federalreserve.gov/SECRS/2006/February/20060214/R-1238/R-1238_38_1.pdf) [<https://perma.cc/3P87-4RQF>] ("As discussed above, the U.S. government's guarantee of Guaranteed Student Loans is direct, Footnote explicit, irrevocable, and effectively unconditional.").

<sup>39</sup> *Putting Students First*, Ctr. for Am. Progress (Apr. 29, 2004), <https://www.americanprogress.org/issues/education-k-12/news/2004/04/29/661/putting-students-first/> [<https://perma.cc/RH9Q-B7J7>] ("FFEL is a no-lose proposition for private lenders. The government guarantees repayment in the case of default and a predetermined profit margin, paying a subsidy if the student interest rate falls below a set level. Therefore, it is not surprising that the largest private lender in FFEL – Sallie Mae – is also one of the most profitable companies in the country. In fact, Sallie Mae was recently identified as the second most profitable company in the United States with over 36 percent return on revenues – compared to a median return of 4.6 percent for the nation's 500 biggest companies."); see also Am. Assoc. of Collegiate Registrars & Admissions Officers, *Easy Money: How Congress Could Increase Federal Student Aid Funding at No Additional Cost to Taxpayers* (2005), <http://cdn.publicinterestnetwork.org/assets/REiZMZ-i7slqnQcU58HlqA/easymoney.pdf> [<https://perma.cc/PF6M-9GWX>] ("Student loans made through the FFEL Program therefore cost the federal government nearly \$11 more for every \$100 lent than the same loans made through the Direct Loan program . . .") ("According to a recent Fortune 500 ranking, Sallie Mae is rated as the second most profitable corporation for return on revenues, with a 36.9 percent return in 2003. The median return on revenues for the 500 biggest companies in the United States during the same period was 4.6 percent.").

<sup>40</sup> *Supra* note 26.

portfolio and are placed with a new student loan servicer—similar to the loss of interest revenue incurred by creditors, consolidation therefore costs loan servicers a stream of future servicing fees.<sup>41</sup>

In 2016, the Government Accountability Office (GAO) criticized a similarly misaligned incentive structure put in place across the federal government’s student loan servicing contractors.<sup>42</sup> Much like how a commercial servicer will lose a customer if it appropriately counsels a public service worker about the need to consolidate, so too will federal contractors hired by the Department of Education to service loans owned by the government. That is because, for most of the PSLF program’s history, the Pennsylvania Higher Education Assistance Agency (PHEAA) has been the Department of Education’s specialty servicer for PSLF—handling all borrowers’ accounts that the government expects will be eligible for PSLF in the future.<sup>43</sup> For a student loan servicer servicing a FFELP loan—whether that FFELP loan is owned by a private creditor or the federal government—the prospect of losing the right to service that loan may drive poor customer service.<sup>44</sup> As noted in the same 2016 GAO report:<sup>45</sup>

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.

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<sup>41</sup> *Id.*

<sup>42</sup> See GAO, Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight (2016), <https://www.gao.gov/assets/680/677159.pdf> [<https://perma.cc/2EJ4-UYMP>]; *but see* Broken Promises: The Untold Failures of ACS Servicing, *supra* note 8 (describing how ACS was the sole servicer for Direct Loans at the beginning of the PSLF program).

<sup>43</sup> See Alexandra Hegji, Cong. Rsch. Serv., R45389, The Public Service Loan Forgiveness Program: Selected Issues 6 (2018), <https://fas.org/sgp/crs/misc/R45389.pdf> [<https://perma.cc/WVB8-92N8>].

<sup>44</sup> See The Inst. for Coll. Access & Success, Comment Letter on Request for Information Regarding Student Loan Servicing (July 13, 2015), <https://www.regulations.gov/document?D=CFPB-2015-0021-0356> [<https://perma.cc/C6KU-4VXD>] (“Servicers may be reluctant to inform borrowers of PSLF and direct them to complete the annual employment certification form for PSLF because doing so currently leads to the loan being reassigned to a specialty servicer. Similarly, servicers may be reluctant to tell borrowers with FFEL loans about PAYE or the proposed REPAYE plan because it may lead to the borrower consolidating their loans into DL and the consolidation loan being serviced by a different servicer.”).

<sup>45</sup> See *supra* note 42.



Prompted by tens of thousands of PSLF denials where public service workers owed ineligible federal student loans and informed by the underlying economic conflict of interest at the center of the PSLF program, the SBPC and AFT sought to uncover whether and how the U.S. Department of Education regulated or oversaw private-sector creditors and loan servicers participating in the FFEL Program in the decade since PSLF was created. As discussed below, open records requests submitted to the Department of Education and to state-backed student loan companies expose the federal government's inaction and set the stage for a decade of abuses by the student loan industry.

## Part 3: Exposing Conflicting Claims: Demanding Answers for Public Service Workers

The SBPC and AFT issued an initial inquiry under the Freedom of Information Act (FOIA) and state open records laws in December 2018.<sup>46</sup> The requests asked the U.S. Department of Education and seven state-backed student loan companies that originated, own, or service FFELP loans (FFEL Program participants) to provide evidence of any guidance, regulation, or other instructions by the U.S. Department of Education to private-sector creditors related to the servicing of student loans owed by borrowers working in public service.<sup>47</sup>

### Initial FOIA request to the Department of Education

#### Request under the Freedom of Information Act

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

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

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

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



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

SBPC and AFT FOIA Request

This particular request (above) was designed to uncover information and guidance the Department of Education provided specifically to FFEL Program participants about how to communicate with borrowers expressly interested in PSLF and borrowers generally inquiring about the benefits and protections which may be afforded

<sup>46</sup> See *Keeping the Promise of Public Service Loan Forgiveness*, Student Borrower Prot. Ctr. (Dec. 19, 2018), <https://protectborrowers.org/wp-content/uploads/2020/01/SBPC-AFT-PSLF-Investigation.pdf> [<https://perma.cc/YLJ2-CKPM>].

<sup>47</sup> See *id.* at 25.

to them.<sup>48</sup> At the end of March 2019, the SBPC and AFT received an incomplete response from ED’s Office of Federal Student Aid (FSA),<sup>49</sup> the government office responsible for “directly managing or overseeing an outstanding federal student loan portfolio comprised of billions of dollars in Title IV loans and representing millions of borrowers. This federal student loan portfolio includes Direct Loans, Federal Family Education Loans (FFEL), and Perkins Loans with outstanding balances.”<sup>50</sup>

### Final Response to FOIA Request

From : Nathan Wilson  
FOIA & Privacy Act Fulfillment Team  
FSA Communications and Outreach

Subj: FOIA Request 19-00566-F (Habash)

Please process this final response for the above-mentioned FOIA request, as Federal Student Aid (FSA) has not located documents responsive to this request.

**Request**

In the request received by PIRM’s and FSA on December 20, 2018, Mr.Habash sought the following:

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

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

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

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

**Search Methodology and Results**

FSA assigned this request to its Business Operations business unit. Business Operations responded as follows: “FSA has not communicated to FFEL Program participants how they should communicate with borrowers about PSLF. However, here is a list of PSLF-related announcements on IFAP:



**"FSA has not communicated to FFEL Program participants how they should communicate with borrowers about PSLF. However, here is a list of PSLF-related announcements on IFAP. . . ."**

FSA Correspondence

<sup>48</sup> See Appendix 1.

<sup>49</sup> See Appendix 2.

<sup>50</sup> *Federal Student Loan Portfolio*, U.S. Dep’t of Educ. Fed. Student Aid, <https://studentaid.gov/data-center/student/portfolio> [<https://perma.cc/9ZDV-KAA3>].

But instead of producing any official guidance issued to the private-sector creditors or loan servicers who handle hundreds of billions of dollars in federal student loans that are eligible for consolidation,<sup>51</sup> FSA responded with the following statement:<sup>52</sup>

FSA has **not** communicated to FFEL Program participants how they should communicate with borrowers about Public Service Loan Forgiveness (PSLF). [emphasis added]

FSA officials pointed to a series of public notices issued at least four years after the creation of the PSLF program, all which fail to provide any specific guidance to FFEL Program participants on how to help borrowers become eligible for the program.<sup>53</sup>

As part of the underlying request, this investigation also sought clarification from several state-backed student loan companies that have participated in some capacity in the FFEL Program. Each of these entities had a legal

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<sup>51</sup> Readers should note that the correspondence and documents provided by the U.S. Department of Education and state-backed student loan companies only relate to the FFEL Program. As described above, the largest student loan companies also service Direct Loans under contract with the U.S. Department of Education. In court filings and public statements across consumer protection litigation, student loan companies have gone to great lengths to conflate these two roles—which are legally and functionally separate. While it remains unclear whether the U.S. Department of Education has ever provided relevant non-public direction to its contractors related to the servicing of Direct Loans, this report confirms that no relevant guidance exists today or has existed in the past related to the FFEL Program. Because borrowers with FFEL Program loans and Direct Loans have different rights and responsibilities, readers should also note that FFEL creditors like Navient would have no legal obligation to comply with any non-public instruction related to the Direct Loan Program, should such instruction exist. Nevertheless, where the Department of Education does provide guidance to FFEL creditors and servicers, industry abides. For example, FFEL creditors offer borrowers the repayment flexibilities described in 34 C.F.R. § 685 et seq.

<sup>52</sup> See Appendix 2.

<sup>53</sup> Three IFAP notices were provided by FSA in response to the record request. The first was a notice from May 2018 stating that Congress passed the Consolidated Appropriations Act of 2018 which set aside funds to provide limited, additional forgiveness for borrowers with Direct Loans in non-qualifying repayment plans. See Fed. Student Aid, *Temporary Expanded Public Service Loan Forgiveness Opportunity Now Available* (May 23, 2018), <https://ifap.ed.gov/electronic-announcements/05-23-2018-loans-subject-temporary-expanded-public-service-loan> [<https://perma.cc/RHV3-ERGV>]. The second notice was from December 2018 announcing the newly available PSLF help tool. See Fed. Student Aid, *Public Service Loan Forgiveness (PSLF) Help Tool Available* (Dec. 12, 2018), <https://ifap.ed.gov/electronic-announcements/12-12-2018-direct-loans-subject-public-service-loan-forgiveness-pslf-help> [<https://perma.cc/2NVL-2EUY>]. The final IFAP notice was from January 2012 announcing the approval of the PSLF employer certification form. None of these notices provided any guidance to FFEL Program participants regarding PSLF. In fact, only the TEPSLF notice even mentioned the FFEL Program, and did so in the context of informing FFEL borrowers that they would continue to remain ineligible for the temporary expansion. See Fed. Student Aid, *Employer Certification for Public Service Loan Forgiveness Form* (Jan. 31, 2012), <https://ifap.ed.gov/dear-colleague-letters/01-31-2012-gen-12-02-subject-employment-certification-public-service-loan> [<https://perma.cc/5LC2-T8L6>].

obligation to comply with their state’s open records laws.<sup>54</sup> Their responses were consistent with the information provided by FSA. State-backed student loan companies in New Jersey<sup>55</sup> and Kentucky<sup>56</sup>—each of which were once lenders in the FFEL Program and both of which continue to own legacy FFELP loans—confirmed that ED never provided PSLF-specific guidance to them. In the response from the New Jersey Higher Education Student Assistance Authority, officials pointed to older FSA conference training presentations and the Dear Colleague Letter archives for general information, neither of which were directly responsive to our inquiry. Similarly, the Kentucky Higher Education Assistance Authority responded:

### Response from the Kentucky Higher Education Assistance Authority (KHEAA)



FINANCE AND ADMINISTRATION CABINET  
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Dear Mr. Habash:

I write in response to your above-referenced request dated December 19, 2018. As you may be aware, the Kentucky Open Records Statutes, KRS 61.870, et. seq., afford the recipient of a request thereunder three business days in which to respond. The email to which your request was attached was sent at 5:41 pm on Wednesday, December 19. KHEAA’s offices close at 4:30 pm Monday through Friday. As a result, the request was officially received on Thursday, December 20<sup>th</sup>, when the KHEAA offices reopened. Monday, December 24<sup>th</sup>, would be the third business day for statutory purposes. However, all KHEAA offices were closed on the 24<sup>th</sup> and 25<sup>th</sup> for the Christmas holiday. Therefore, this response on Wednesday, December 26, is timely under the statutes.

You have requested all documents, including Dear Colleague Letters, formal guidance and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to Public Service Loan Forgiveness (PSLF). KHEAA is neither a lender nor servicer under FFEL, but rather a guaranty agency. Nonetheless, both KHEAA’s Student Ombudsman and Compliance Manager have confirmed that Dear Colleague Letters are not maintained in-house as a part of the agency’s standard operating procedures since these are readily available not only to KHEAA, but to the public, at the Information for Financial Aid Professionals (IFAP) website ([ifap.ed.gov](http://ifap.ed.gov)). As a result, KHEAA does not have documents responsive to this part of the request. Further, both of the above-listed individuals have confirmed that the Department has not issued any specific guidance to guaranty agencies with respect to how they should communicate with borrowers concerning PSLF. Thus, no records responsive to that portion of the request are in KHEAA’s custody or control.



**"KHEAA does not have documents responsive to this part of the request. Further, both of the above-listed individuals confirmed that the Department has not issued any specific guidance to guaranty agencies with respect to how they should communicate with borrowers concerning PSLF."**

KHEAA Correspondence

<sup>54</sup> See *supra* note 46 at 42; see also Appendix 3.

<sup>55</sup> See Appendix 4.

<sup>56</sup> See Appendix 5 ("When KHEAA receives an inquiry from a borrower regarding PSLF, the written response includes relevant information obtained from the Department’s website - <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#eligible-loans>, as well as the link to that site. Essentially, KHEAA advises the borrower that the loans KHEAA holds – FFEL Program loans – are ineligible for the program and instead refers the borrower to the above-listed website for further information and assistance.").

Based on the initial response provided by FSA and confirmation from these state-backed student loan companies, the SBPC and AFT requested that the Department of Education confirm in writing that the federal government never directed FFEL Program participants' handling of PSLF.<sup>57</sup>

### Final response from FSA for the record in response to SBPC and AFT



Tariq Habash <tariq@protectborrowers.org>

**FW: FSA Action Complete 19-00566-F**

Tariq Habash <tariq@protectborrowers.org> Mon, Apr 8, 2019 at 2:40 PM  
To: "Pedersen, AnnMarie" <AnnMarie.Pedersen@ed.gov>

Regarding FOIA number 19-00566-F, I would like to confirm:

- FSA believes it has conducted a comprehensive search for all communications, guidance, records, and documents regarding how FFEL lenders should communicate with borrowers about PSLF. For this to be comprehensive, I would like to further confirm whether this search dates back to the creation of the PSLF program in 2007, or a later date.
- If this was in fact a comprehensive search, does FSA acknowledge that from 2007 to present:
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to respond to questions from borrowers about PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to explain to borrowers that their existing loans were not eligible for PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to help borrowers with FFELP loans become eligible for PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to provide borrowers with FFELP loans, including borrowers who self-identify as teachers, nurses, or members of the military and inquire about benefits, affirmative guidance about existing programs like PSLF that could help alleviate the burden of their student debt.

**"[D]oes FSA acknowledge that . . . ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to respond to questions from borrowers about PSLF. . . ."**

SBPC and AFT follow up

<sup>57</sup> See Appendix 6.

### Final response from FSA for the record in response to SBPC and AFT



I wanted to provide you with our response to your questions below.

FSA believes it has conducted a comprehensive search for all communications, guidance, records, and documents regarding how FFEL lenders should communicate with borrowers about PSLF. For this to be comprehensive, I would like to further confirm whether this search dates back to the creation of the PSLF program in 2007, or a later date.

Yes, FSA believes it has conducted a complete and reasonable search.

If this was in fact a comprehensive search, does FSA acknowledge that from 2007 to present:

- o ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to respond to questions from borrowers about PSLF.
- o ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to explain to borrowers that their existing loans were not eligible for PSLF.
- o ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to help borrowers with FFELP loans become eligible for PSLF.
- o ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to provide borrowers with FFELP loans, including borrowers who self-identify as teachers, nurses, or members of the military and inquire about benefits, affirmative guidance about existing programs like PSLF that could help alleviate the burden of their student debt.

The Department of Education's administration and oversight of the FFEL Program focus on ensuring that the terms and conditions of FFEL Program loans are properly granted/administered. The expectations of FFEL Program participants is that they provide accurate information to borrowers with questions about their loans, including whether they are eligible loans for the purposes of Public Service Loan Forgiveness. They are expected to obtain that information by remaining aware of IFAP announcements, regulation changes and direct communication with the Department in the event of any ambiguities.

**"The Department of Education's . . . expectations of FFEL Program participants is that they provide accurate information to borrowers with questions about their loans, including whether they are eligible loans for the purposes of Public Service Loan Forgiveness."**

FSA Correspondence

The Department of Education provided its official response, restating its position that FFEL Program participants must provide accurate information to borrowers who have questions about PSLF,<sup>58</sup> and that the only the information and guidance these companies receive comes from public Information for Financial Aid Professionals (IFAP) announcements and changes in regulations. Companies are expected to seek clarification from the Department of Education as needed. Specifically, the official response says:<sup>59</sup>

The Department of Education's administration and oversight of the FFEL Program focus on ensuring that the terms and conditions of FFEL Program loans are properly granted/administered. The expectations of FFEL Program participants is that they provide accurate information to borrowers with questions about their loans, including whether they are eligible loans for the purposes of Public Service Loan Forgiveness. They are expected to obtain that information by remaining aware of IFAP announcements, regulation changes and direct communication with the Department in the event of any ambiguities.

<sup>58</sup> See Appendix 7.

<sup>59</sup> *Id.*

Despite this response, the Department's self-affirmed complete and reasonable search for responsive records—which included communications, guidance, and notices—produced no record of any Education Department official directing any FFEL Program participant to provide accurate information to borrowers and does nothing to contradict the Department's response to the original FOIA request where the agency stated:<sup>60</sup>

FSA has not communicated to FFEL Program participants how they should communicate with borrowers about Public Service Loan Forgiveness (PSLF).

Based on ED's own communications, it is now clear that for over a decade, FSA has allowed FFEL Program participants to determine their own policies and procedures for communicating with public service workers who owe these older federal student loans. In this vacuum, a web of harmful and possibly illegal industry practices took root. As described below, these abuses created widespread barriers to loan forgiveness for public service workers across the country.

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<sup>60</sup> See Appendix 2.



## Part 4: Why Public Service Workers are Being Denied Their Right to Loan Forgiveness—Alleged Illegal Industry Practices

In the absence of guidance and oversight by the Department of Education, student loan servicers erected a minefield of misrepresentations, omissions, and shoddy servicing practices that derailed borrowers' pursuit of Public Service Loan Forgiveness. Across hundreds of consumer complaints and court filings, borrowers tell the same story—after repeatedly stating they are working in public service, servicers failed to provide the necessary information about how to get on track for PSLF.<sup>61</sup> Instead, servicers continuously led borrowers to believe they were successfully earning credit toward PSLF, only to have them learn after many years and thousands of dollars that not a single payment counted. Moreover, when borrowers took steps to become eligible for PSLF, student loan holders and servicers intentionally dragged out the consolidation process to avoid losing the account.

**Borrowers report that servicers affirmatively represent that borrowers are on track to earn PSLF, despite having ineligible loans.** After the PSLF program went into effect in 2007, many federal student loan borrowers began calling their student loan servicers with questions about eligibility for the program. However, because there was no guidance from the Department of Education, many servicers misrepresented the program requirements and misled borrowers about what actions were needed to qualify. Borrowers relied on these representations and, as a result, spent several years and thousands of dollars without earning any credit toward loan forgiveness. In one example, a borrower explains:

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<sup>61</sup> CFPB *Consumer Complaint 3129984*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3129984> [<https://perma.cc/APG4-P8J2>] ("I, like many other consumers, recently was informed my Federal Family Education Loans . . . do not qualify for the Public Service Loan Forgiveness program. I have consistently been making monthly payments on my . . . loans for 11 years, during which time I have worked only for non profit employers. My loan has been serviced by a number of companies. . . . Throughout the course of paying back my loans, I would call from time to time to inquire about repayment options and to ensure I was utilizing the best option for my income and financial situation. I was told, on more than one occasion, by more than one of the loan servicing companies, that my loan would qualify me for the PSLF program after I made the [qualifying] payments. I now know, that is inaccurate information. . . ."); see also CFPB, *Consumer Complaint 2890350*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2890350> [<https://perma.cc/Y38U-4VGJ>] ("I have paid on my school loans for over 25 years. . . . I was [a public servant] for nearly 21 years . . . and was hoping to obtain Public Service Loan Forgiveness (PSLF). However, EdFinancial (my servicer) is telling me that my loans are not eligible for PSLF due to the type of loans I have. . . ."); CFPB, *Consumer Complaint 3274396*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3274396> [<https://perma.cc/HU9G-YMRF>] ("I had some loans . . . that were FFEL loans and then Direct loans . . . they were all consolidated into FFEL loans . . . . When PSLF came around . . . I was told I was on the right plan. I really wasn't told anything except to pay 120 payments and work for public service. . . . I have paid 120 payments. I have worked as a [public servant] for all these years as well. I applied for PSLF and received a letter stating none of my payments count because . . . they were FFEL loans. . . . I feel like they are cheating many of us out of something we have been working towards. I have paid 120 payments total[ing] \$39,000. . . . I have been cheated and lied to. I am sure I am not the only one in this situation. The system needs to be fixed. It needs to be fair for all of us that have paid, and worked for years thinking we would get our loans forgiven."); *Vullo v. Conduent*, *supra* note 32 at ¶ 13; *Chery v. Conduent*, *supra* note 11.

I called Nelnet to verify I was in the right program to qualify for loan forgiveness after 10 years of service. . . . Nelnet assured me I was in the correct loan and correct payment plan to qualify. I even called a few extra times throughout the past 10 years to verify everything was still in order. Once again they assured me it was and everything is correct. About a year ago I called Nelnet and they told me I'm in the wrong type of loan and I don't qualify for the federal loan forgiveness program. I've tried everything to try and get Nelnet to take responsibility for their mistakes for providing me incorrect and misleading information over the years. They have even acknowledged that I called when I said I did and have records indicating the reason for my calls. The customer service representative on my most recent call admitted they made a mistake and that the program was new and they didn't have proper procedures in place to manage the program.<sup>62</sup>

**Borrowers complain that servicers never advised them to consolidate their FFELP loans into a Direct Loan to become eligible for PSLF.** As previously discussed, only Direct Loans are eligible for PSLF. Borrowers with older FFEL Program loans have the option to consolidate in order to become eligible for PSLF. In doing so, these loans are paid off and the borrower's new Direct Loan is serviced by one of the Department of Education's contracted servicers. However, this change in servicing also results in a loss of business for the FFELP Loan holder and servicer. As previously discussed, this incentive structure often results in borrowers being steered away from consolidation, and consequently, PSLF.<sup>63</sup>

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<sup>62</sup> CFPB, *Consumer Complaint 2731625*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2731625> [<https://perma.cc/4PB6-NM9G>]; see also CFPB, *Consumer Complaint 2944222*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2944222> [<https://perma.cc/43PY-AKFC>] ("All of my original loans . . . were obtained under the FFEL loan program. . . . I began repayment . . . under the impression from Great Lakes that I would qualify for PSLF, so I make career plans to work in [public service], balancing the lower pay with the opportunity for forgiveness. I contacted Great Lakes annually for Income Based Repayment . . . qualification, a requirement for loan forgiveness, each year confirming that my loans would qualify for PSLF. . . . This spring I checked in again with Great Lakes knowing my 120 payments would be complete soon after 10 years of payments. For the first time in 9 years of yearly checking with Great Lakes I was informed that none of my loans qualify. . . . I love my job but my financial plans are turned upside down because of the repeated and consistently bad advice I received from Great Lakes. I have no way to know if the bad advice I received was intentional or simply benign neglect, but there is no doubt that Great Lakes received more income due to my intelligibility for forgiveness than if they had give me the information i needed to stay on track for forgiveness."); CFPB, *Consumer Complaint 2934004*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2934004> [<https://perma.cc/L4HP-2ZAD>] ("I re-consolidated my loans . . . since I had read that through them I could benefit from . . . Public Service Loan Forgiveness . . . I made clear that I wished to enroll in both the [IDR] and the PSLF programs. They said I could do so, and sent me an application, which I filled out and returned, and which was approved. Ever since I have made regular payments on my FFEL loans. . . Periodically, in the yearly process of renewing my [IDR payment plan], I received verbal confirmation from representatives that my loans would be forgiven when I had made 120 payments. . . . When [my previous loan holder] sold my loan to Nelnet . . . I contacted Nelnet to make sure that I could still access my payment history and that my [IDR] and PSLF enrollments were in good standing. The Nelnet representative . . . informed me that . . . FFEL loans, which mine are, are ineligible for the PSLF program. . . .").

<sup>63</sup> See *supra* note 42.

The consequences of these misaligned economic incentives result in measurable harm to individual public service workers, as documented in consumer complaints and court filings. FFEL servicers intentionally omitted key information about how to become eligible for PSLF. As a result, borrowers were knocked off track and lost out on significant progress toward loan forgiveness. In one example, a borrower explains:

Because Great Lakes consolidated me into FFEL loans and I never received information about direct loan consolidation options or how FFEL would limit my eligibility for PSLF, I am five years behind on my pathway to PSLF. I made \$18000 in payments that will, essentially, not count toward anything in the end, because I was in the wrong kind of loan.<sup>64</sup>

This sentiment was echoed in a joint enforcement action between the New York Attorney General and Department of Financial Services against ACS Educational Services.<sup>65</sup> In its complaint, New York noted that ACS

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<sup>64</sup> CFPB, *Consumer Complaint 2856416*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2856416> [<https://perma.cc/FAA2-WCNH>]; see also CFPB, *Consumer Complaint 3078951*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3078951> [<https://perma.cc/23ZN-N8BG>] ("I received a FFEL Consolidated Loan. . . . I was led to believe by ACS that my qualifying payments . . . would be eligible for the Public Service Loan Forgiveness Program. As a result, I believed that I had earned approximately 4 years . . . worth of qualifying service towards PSLF. ACS NEVER informed me that my loan needed to be converted into a Direct Consolidated Loan. It wasn't until [2012], when the government released their forms and clarified the requirements, that I learned that the FFEL consolidated loan that I had been paying on did not qualify. As a result, I applied and received a Direct Consolidation Loan. Like so many of the student loan borrowers, who were misled about the program, I had to begin all over with repayments. Four years of service disqualified and four years of unnecessary payments all because ACS failed to inform their clients of necessary information!!! This is not fair to all of us past students who relied upon this loan servicer (as well as others) and are now having to continue with the burden of paying off our debt much longer than expected."); CFPB, *Consumer Complaint 3043582*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3043582> [<https://perma.cc/UB4C-6XPF>] (" . . . I was informed that I do not qualify for PSLF because my loans are FFELP loans. This information was provided to me after calling in because I received a vague notice informing me that my employment certification was denied, without the reason why. Today was the 6[th] time this year that I called . . . regarding PSLF. Years ago I had also contacted them regarding PSLF and I was never told that my loans were FFELP loans. Additionally, my loan servicer AES never told me that my loans are FFELP loans even after I called them to be placed on an income driven repayment plan for PSLF years ago. Furthermore, under the loan detail section of their website for my loans it does NOT say the type of loan that I have, whether direct or FFELP. . . ."); CFPB, *Consumer Complaint 2734684*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2734684> [<https://perma.cc/QW3A-97KX>] ("I consolidated my federal student loans . . . and later inquired about income based repayments and public service forgiveness programs. I was told my FFEL loans would qualify and all on time payments would count toward the PSLF. They indicated the payments and loans would be forgiven after 120 on time payments. . . . I submitted my certification paperwork to begin the PSLF process. I was notified . . . my current loans were not in an eligible loan program. . . . I am now being told I must consolidate my loans again with another agency and none of my past payments are qualifying. Many financial and career choices were made with the consulting I did with Great Lakes. Now my family and I are told we must start over if we wish for pay off our loans.").

<sup>65</sup> See *Vullo v. Conduent*, *supra* note 32 at ¶ 13.

often steered borrowers away from consolidation in order to avoid losing business, and in turn, jeopardized borrowers' entire financial lives. The complaint further noted, "ACS managers directed representatives not to provide information on PSLF eligibility criteria to borrowers who contacted ACS seeking information about the program."<sup>66</sup>

**Borrowers complain that when attempting to consolidate their loans to become eligible for PSLF, FFEL loan holders and servicers create unnecessary and impermissible delays.**

FFELP loan borrowers may choose to consolidate their loans in order to pursue PSLF. When a borrower is consolidating a federal student loan, the borrower's old loan holder or servicer works with the new servicer to transfer loan balance information in order to pay off the old loan. This process is facilitated by a Loan Verification Certification (LVC).<sup>67</sup> Pursuant to federal regulation, the old loan holder must complete the LVC within 10 days, so the new servicer can complete the consolidated loan disbursement.<sup>68</sup> In effect, a borrower should be able to complete the loan consolidation process and begin making payments on a PSLF-eligible loan within 30 days.<sup>69</sup>

However, borrower complaints and actions by federal and state law enforcement show that FFEL servicers often delay this process without reason and in violation of federal law.<sup>70</sup> For example, New York law enforcement

**"ACS managers directed representatives not to provide information on PSLF eligibility criteria to borrowers who contacted ACS seeking information about the program."**

<sup>66</sup> *Id.* at ¶ 19.

<sup>67</sup> See, e.g., *LVC Request and Response Field Details*, My Great Lakes (Oct. 1, 2018), [https://home.mygreatlakes.org/web/partners/content/sharedcontent/support\\_docs/LVC\\_Request\\_and\\_Response\\_Field\\_Details.pdf](https://home.mygreatlakes.org/web/partners/content/sharedcontent/support_docs/LVC_Request_and_Response_Field_Details.pdf) [<https://perma.cc/UPG6-5L3N>].

<sup>68</sup> 34 C.F.R. § 685.220(f)(1)(i); see also *Federal Direct Consolidation Loan Verification Certificate William D. Ford Federal Direct Loan Program*, Direct Loans, <https://www.reginfo.gov/public/do/DownloadDocument?objectID=45448202> [<https://perma.cc/4MWH-D4H2>], ("Pursuant to 34 C.F.R. § 685.220(f)(1)(i), you must complete and return this LVC within 10 business days of the date received.").

<sup>69</sup> Consumer Fin. Prot. Bureau, *supra* note 12 at 33.

<sup>70</sup> Consent Order, Conduent Education Services, Inc., CFPB No. 2019-BCFP-0005 (2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_conduent-education-services-consent-order\\_2019-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_conduent-education-services-consent-order_2019-05.pdf) [<https://perma.cc/9CAS-8Y7C>]; *Vullo v. Conduent*, *supra* note 32; see also CFPB, *Consumer Complaint 2416649*, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2416649> [<https://perma.cc/7CXA-P74B>] ("[S]everal years ago, I contacted my loan servicer, ACS, and inquired whether my loans were consolidated so that I could take advantage of the PSLF . . . program. . . . My loans were in the Family Education Loan (FFEL) Program, and I understood that they may become eligible if I consolidated them into a Direct Consolidation Loan. I asked ACS whether my loans were consolidated and they replied that they were consolidated. . . . I began to gather all necessary employer paperwork and I sent it to ACS . . . for them to process the loan forgiveness. . . . Instead, during that call . . . ACS finally told me to consolidate my loans [into a Direct Consolidation Loan] so that I could begin the ten-year countdown for loan forgiveness. I am outraged and deeply disappointed in the loan

recently took action against ACS Education Services for, among other things, “unduly delaying borrowers from being able to consolidate their federal loans into Direct Loans.”<sup>71</sup> Similarly, the CFPB found in a recent lawsuit that ACS “did not provide LVCs for. . . [b]orrowers seeking to consolidate their [FFELP] Loans in at least 3,680 instances within 10 days of the request. In over 3,130 instances, it took 30 days or more; in at least 1,490 instances it took 4 months or more; and in at least 260 instances, it took over a year.”<sup>72</sup> In effect, one company unfairly denied thousands of borrowers access to a critical protection promised under federal law.

Unfortunately, borrower complaints suggest that similar practices are occurring across the student loan market. As a result, borrowers are prevented from making qualified payments as their loan consolidation sits in limbo.<sup>73</sup> For example, one borrower reports:

I began working in [public service] and immediately filed paperwork to have my loans consolidated so I may join the program. Due to multiple errors and delays in processing, I wasn't allowed to begin making payments until [redacted]. I have tried to remedy this complaint with . . . my current loan servicer, however, they won't allow me to make payments for the lost months in this error.<sup>74</sup>

As these examples illustrate, mismanagement by the Department of Education translated directly into improper or illegal servicing practices that denied borrowers their rights under the law.

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servicing companies . . . I am certain there are other people out there who have been misled by signing for a 'federal student loan' only to have it serviced by an inept and profit-hungry servicing company. . . .”).

<sup>71</sup> DFS Superintendent Vullo and A.G. James Announce \$9 Million Settlement With Conduent Education Services, LLC For Engaging In Illegal Practices While Servicing Student Loans, N.Y. Dep't of Fin. Servs., (Jan. 14, 2019) [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr1901041](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1901041) [<https://perma.cc/7JH5-N6QQ>].

<sup>72</sup> Conduent Consent Order, *supra* note 70, at ¶ 26.

<sup>73</sup> See also CFPB, Consumer Complaint 3253211 (May 24, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3253211> [<https://perma.cc/AGH9-VUX9>]; CFPB, Consumer Complaint 1877725, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/1877725> [<https://perma.cc/44KB-SD5G>].

<sup>74</sup> CFPB, Consumer Complaint 2669231, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2669231> [<https://perma.cc/52LS-NTRA>].

## Findings and Recommendations

This report reveals how the promise of PSLF was never fulfilled for public service workers across the country—particularly for those with older federal loans made through the FFEL Program. To understand why the mismanagement of a seemingly simple set of borrower rights denied borrowers across the country access to PSLF, readers should consider three central findings from our investigation:

- **For more than a decade, the U.S. Department of Education has failed to provide any regulation, guidance, or direction to student loan companies that advise public service workers about their right to PSLF.** As of October 2020, more than three years after the first applicants were denied PSLF and thirteen years after the onset of the program, the U.S. Department of Education has never placed an affirmative duty on the student loan industry to tell borrowers about the availability of PSLF or the need to consolidate older federal loans in order to get on track to receive loan forgiveness.
- **In the absence of guidance and regulation, student loan companies' practices may be driven by an economic conflict of interest that incentivizes deception and abuse.** When a public service worker invokes his or her right to consolidate an older federal student loan to pursue PSLF, creditors and loan servicers who handle these older loans will lose all future revenue from that individual. Facing the prospect of thousands, tens of thousands, or millions of borrowers eligible to invoke their rights, executives needed to confront a new economic reality posed by this potential loss in revenue. This economic conflict of interest incentivizes student loan companies to deceive or mislead borrowers about the right to loan forgiveness.
- **The U.S. Department of Education appears to have ignored mounting evidence of mismanagement and abuse by companies managing older federal loans guaranteed by the federal government.** As described above, recent litigation, including consumer protection actions filed by law enforcement officials and regulators, allege that companies servicing loans made through the FFEL Program systematically derailed borrowers' efforts to consolidate FFELP loans for the purpose of pursuing PSLF. However, there remains no evidence in the public record that in the 13 years since PSLF's creation the U.S. Department of Education has ever taken any proactive action against a student loan company for deceiving or defrauding FFELP borrowers working in public service—a clear signal from these companies' purported regulator that the rights of public service workers need not be a priority.

These three key findings expose the fundamental flaw in the implementation of PSLF as it relates to the millions of student loan borrowers with older loans made through the FFEL Program: the federal government trusted the student loan industry to self-regulate and self-police, despite repeated warnings by government watchdogs and legal actions by borrowers and enforcement officials.

## Recommendations

When Congress created the PSLF program, it ensured that all borrowers had a path to relief, even if they owed on FFELP loans. Unfortunately, our investigation has exposed a decade of neglect by the Department of Education and abuse by the student loan industry, causing borrowers across the country to have their rights stripped away. To address the consequences of a decade of government mismanagement and industry abuse, regulators, lawmakers, and industry must immediately take the following steps:

- **The Secretary of Education should ensure that past and present borrowers with loans made through the FFEL Program are able to get credit for public service, consistent with the goals of the PSLF program.** To address the issues uncovered by our investigation, the Secretary of Education must bring the full weight of her authority under the Higher Education Act, including but not limited to the administrative flexibility authorized by the HEROES Act of 2003,<sup>75</sup> to ensure that all FFEL borrowers—including those who subsequently consolidated their FFELP loans into Direct Loans—are able to get credit for any otherwise qualifying payments made since 2007. There is precedent for administrative action—the Department recently acknowledged for the first time that it has granted credit for PSLF to borrowers who do not have the right type of loan when the borrower was misled by a student loan company.<sup>76</sup>
- **Congress should fix the flaw in the PSLF program to ensure ED is required to retroactively count all FFEL borrowers' past qualifying payments.** As previously discussed, Congress passed a temporary expansion to PSLF in 2018 to assist borrowers denied PSLF for being in the wrong type of repayment plan. Unfortunately, as also described above, borrowers who pursue this temporary expansion continue to be rejected at high rates, in part because borrowers with FFELP loans were excluded from this smaller rescue effort. Congress must respond to the failures by industry and the Department of Education by legislating a permanent accommodation for FFEL borrowers, ensuring that their loans— and their years

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<sup>75</sup> The Higher Education Relief Opportunities for Students (HEROES) Act, Pub. L. No. 108-76 (2003).

<sup>76</sup> Stacy Cowley, *The Student Loan Appeal Process the Government Doesn't Tell You About*, N.Y. Times (Feb. 17, 2020), <https://www.nytimes.com/2020/02/17/business/federal-student-loan-appeals.html?emc=rss&partner=rss> [https://perma.cc/T8R6-KJTC].

of qualifying public service work—will finally be recognized. There have been a number of legislative proposals to achieve this goal, including, notably, the What You Can Do For Your Country Act, championed by Senators Kaine and Gillibrand and Representatives Sarbanes and DeSaunier.<sup>77</sup>

Recognizing the central role that public service workers have played in America's pandemic response, a variation of this approach was also included in COVID relief legislation passed by the House of Representatives in October 2020.<sup>78</sup>

- **Law enforcement officials, regulators, and the Department of Education must investigate and audit the FFEL Program, with a focus on evaluating creditors' and servicers' handling of borrowers who work in public service.** As policymakers, regulators, and federal and state law enforcement officials consider opportunities to further investigate allegations of abuse by the student loan servicing industry, officials must focus on potential gaps between borrowers' rights under federal law and industry practices that produce bad outcomes for consumers. This should include both continued attention by federal and state law enforcement officials on the specific obstacles faced by public service workers who owe FFELP loans, as well as a new, comprehensive effort to independently audit the FFEL Program and assess whether the creditors and servicers who handle these loans are improperly denying borrowers' rights under the Higher Education Act.<sup>79</sup> Where efforts to investigate or audit reveal illegal or improper practices by the student loan industry, the Education Department must take immediate action to forgive loans for affected public service workers, as described below.

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<sup>77</sup> See *generally* What You Can Do for Your Country Act, H.R. 2441, 116th Cong. (2019); What You Can Do for Your Country Act, S.1203, 116th Cong. (2019).

<sup>78</sup> Press Release, House Passes Updated Heroes Act, U.S. H.R. Comm. on Appropriations (Oct. 1, 2020), <https://appropriations.house.gov/news/press-releases/house-passes-updated-heroes-act> [<https://perma.cc/Y9VU-UJSF>].

<sup>79</sup> As part of any independent investigation or audit, officials should consider demanding answers to the following four questions to better assess student loan companies' compliance with the law: 1) What policies and procedures are in place to govern interactions between a servicer and a borrower working in public service? For how long has this policy been in place? How has it changed over time? 2) What training materials and compensation structures apply to representatives who handle questions from borrowers about the availability of PSLF, income-driven repayment and other protections and repayment options? For how long has this training and compensation regime been in place? How has it changed over time? 3) If a borrower self-identifies as a public service worker, does the student loan company require representatives to affirmatively disclose the existence of PSLF? Are workers permitted to exercise discretion when deciding whether or not to disclose the existence of PSLF? 4) If a borrower requests "loan forgiveness" or "public service loan forgiveness" explicitly, does the student loan company require representatives to affirmatively direct a borrower to consolidate his or her loans in order to become eligible? Are workers permitted to exercise discretion when deciding whether or not to make such a disclosure?



- **ED’s Office of Federal Student Aid must take immediate action to ensure creditors and servicers in the FFEL Program timely certify borrowers’ loans as part of the consolidation process and provide relief for borrowers who lost credit due to improper delays.** As described above, when a borrower applies for loan consolidation, the prior creditor or servicer must certify the outstanding balance of each FFELP loan within 10 days by completing a Loan Verification Certificate (LVC) for each loan. An LVC ensures that the amount refinanced by a new Direct Consolidation Loan is accurate and that all key loan information is retained in the transaction. Unfortunately, as described above, borrowers have been forced to wait for weeks, months, or years as FFEL servicers fail to timely issue borrowers’ LVCs, losing critical months of qualifying payments toward PSLF. FSA must take immediate action to ensure all creditors and servicers in the FFEL Program timely process these certifications, issuing guidance and performing targeted compliance audits where necessary. Further, the Secretary of Education must also retroactively award credit for lost months of qualifying service for all public service workers who were harmed by improper certification delays, leveraging the process described in the following recommendation.
- **The Secretary of Education must provide loan forgiveness on a class-wide basis where law enforcement officials or government audits have documented deception, misrepresentation, or other illegal practices by student loan companies that have denied borrowers with FFELP loans access to PSLF.** As described above, recent enforcement actions have uncovered instances where the student loan industry has systematically misled borrowers about their right to consolidate a FFELP loan and pursue PSLF. In these cases, where hundreds, thousands, or tens of thousands of borrowers may have been systematically denied their rights over a period of years, the Department of Education must take immediate action to ensure these borrowers receive the full benefit of the PSLF program. To date, as described above, the Department has only made special accommodations for FFEL borrowers on an individual basis, placing the burden on individual public service workers to navigate a Byzantine, secretive appeals process and denying justice to similarly situated borrowers even when the Department of Education knows illegal or improper practices are widespread. To implement this recommendation, the Department should look to policy options considered by the Obama-era Education Department to award “group discharges” to classes of similarly situated borrowers defrauded by predatory for-profit schools. By addressing these breakdowns on a class basis, ED can ensure all borrowers who have performed a decade of public service work are able to benefit from PSLF.

## Conclusion

The administrative record uncovered by this investigation reveals that the Department of Education's failures are twofold. First, for more than a decade, the Department of Education failed and continues to fail to direct or oversee the practices of private-sector creditors and loan servicers in the FFEL Program. This lack of direction, guidance, and oversight has driven many of the improper or allegedly unlawful industry practices described in this report. Second, the Department of Education failed and continues to fail to effectively administer the PSLF program, as evidenced by widespread borrower denials, mounting litigation, and scathing government audits. The pathway for FFEL borrowers to access PSLF has been a core element of this program from its inception, yet in failing to adequately regulate the FFEL industry, ED has blocked this path and denied loan forgiveness to public service workers across the country. Policymakers and enforcement officials must immediately take the steps outlined in this report to finally afford justice to the dedicated public service workers denied the promise of loan forgiveness due to a decade of mismanagement and abuse.

# Appendix: Responsive Records

This appendix references specific communication with FSA officials and state-backed loan holders referenced in the report.

Appendix 1: Original FOIA request to ED.....Page 36

Appendix 2: First response from ED.....Page 41

Appendix 3: Original open records requests to state-based loan holders .....Page 43

Appendix 4: Response from New Jersey Higher Education  
Student Assistance Authority (HESAA).....Page 49

Appendix 5: Response from Kentucky Higher Education  
Assistance Authority (KHEAA).....Page 50

Appendix 6: Follow-up questions to ED.....Page 52

Appendix 7: Final response from ED .....Page 54



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STUDENT  
BORROWER  
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CENTER

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

December 19, 2018

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

Re: Freedom of Information Act Request

Dear FOIA Officer:

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

## **Background**

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

## **Request under the Freedom of Information Act**

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



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

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

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

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

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

SBPC and AFT seek all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, the Department has a duty to construe a FOIA request liberally.

Please note that in conducting a "reasonable search" as required by law you must use the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology advances may render ED's prior FOIA practices unreasonable. Moreover, not only does this request require the agency to conduct a search, but individual custodians must conduct their



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

FOIA presumes disclosure. Indeed, “[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a ‘strong presumption in favor of disclosure.’” *AP v. FBI*, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516 at \*10 (D.D.C. Sept. 30, 2017) (quoting *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, i.e., if disclosure would “harm an interest protected by an exemption” or is otherwise “prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i). If the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you “demonstrate the validity of [each] exemption that [the Department] asserts.” *People for the American Way v. U.S. Department of Education*, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC with a Vaughn Index “which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption’s relevance.” *Id.* (citing *Johnson v. Exec. Office for U.S. Att’ys*, 310 F.3d 771, 774 (D.C. Cir. 2002)). See also *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification – specifically identifying the reasons why the exemption is relevant. See generally *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material either via email at [tariq@protectborrowers.org](mailto:tariq@protectborrowers.org) or by mail to Student Borrower Protection Center c/o Tariq Habash; 1015 15th St. NW, #600, Washington, D.C. 20005. We welcome any materials that can be provided on a rolling basis.

### **Request for Waiver of Fees**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. 5.33(a), SBPC and AFT request a waiver of fees associated with the processing of this request because: (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (2) disclosure of the information is not primarily in the commercial interest of the requester.



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

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

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

This request is fundamentally non-commercial.

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

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



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

\* \* \*

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

Sincerely,

Randi Weingarten  
President  
American Federation of Teachers, AFL-CIO

Seth Frotman  
Executive Director  
Student Borrower Protection Center



March 18, 2019

To: FOIA Document Manager  
OM/RIMS/FOIA Office

From : Nathan Wilson  
FOIA & Privacy Act Fulfillment Team  
FSA Communications and Outreach

Subj: FOIA Request 19-00566-F (Habash)

Please process this final response for the above-mentioned FOIA request, as Federal Student Aid (FSA) has not located documents responsive to this request.

### **Request**

In the request received by PIRM's and FSA on December 20, 2018, Mr. Habash sought the following:

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

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

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

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

### **Search Methodology and Results**

FSA assigned this request to its Business Operations business unit. Business Operations responded as follows: “FSA has not communicated to FFEL Program participants how they should communicate with borrowers about PSLF. However, here is a list of PSLF-related announcements on IFAP:

- 

<https://ifap.ed.gov/eannouncements/052318TemporaryExpandedPublicServiceLoanForgivenessOpporAvail.html>

- 

<https://ifap.ed.gov/eannouncements/121218PublicServLoanForgivenessPSLFHelpToolAvail.html>

- <https://ifap.ed.gov/dpcletters/GEN1202.html>”

Please use the language above in your response to the requester. Please let me know if you have any additional questions. Thanks.



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

December 19, 2018

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

Re: Public Records Request

Dear Public Records Custodian:

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

## **Background**

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

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

## **Request under the New Jersey Open Public Records Act**

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



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

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

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

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

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

SBPC and AFT seek all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records.

### **Request for Waiver of Fees**

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



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

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

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

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

Accordingly, SBPC and AFT qualify for a fee waiver.

\*\*\*

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

Sincerely,

Randi Weingarten  
President  
American Federation of Teachers, AFL-CIO

Seth Frotman  
Executive Director  
Student Borrower Protection Center



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

December 19, 2018

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

Re: Open Records Request

Dear Open Records Custodian:

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

## **Background**

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

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

## **Request under the Kentucky Open Records Act**

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



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

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

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

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

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

SBPC and AFT seek all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records.

### **Request for Waiver of Fees**

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



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

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

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

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

Accordingly, SBPC and AFT qualify for a fee waiver.

\*\*\*

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

Sincerely,

Randi Weingarten  
President  
American Federation of Teachers, AFL-CIO

Seth Frotman  
Executive Director  
Student Borrower Protection Center





Tariq Habash &lt;tariq@protectborrowers.org&gt;

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**Fwd: PSLF**

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**Seth Frotman** <sfrotman@gmail.com>  
To: Tariq Habash <tariq@protectborrowers.org>

Fri, Dec 21, 2018 at 1:34 PM

----- Forwarded message -----

From: **Marnie Grodman** <Marnie\_Grodman@hesaa.org>  
Date: Fri, Dec 21, 2018 at 12:18 PM  
Subject: PSLF  
To: >

Good afternoon,

To follow up on our call this morning, attached are the PowerPoint presentations we discussed. In addition to the presentations at the FSA conference, the last two PowerPoints are from NJASFAA conferences and were presented by fedloan Servicing. Below are the websites we were discussing for FSA Dear Colleague Letters and the FSA conference presentations.

Dear Colleague Letter Archive: <https://ifap.ed.gov/ifap/byYear.jsp?type=dpclatters&set=archive>

FSA Training Past Conference Presentations: <https://fsaconferences.ed.gov/pastconferences.html>

FSA 2018 Conference: <https://fsaconferences.ed.gov/2018sessions.html>

Please contact us if we can provide any further assistance.

Thank you,

Marnie

Marnie B. Grodman, Esq.  
Director, Legal & Governmental Affairs  
Higher Education Student Assistance Authority  
P.O. Box 545  
Trenton, NJ 08625  
(609) 588-7121



FINANCE AND ADMINISTRATION CABINET  
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Matthew G. Bevin  
Governor

P.O. Box 798  
Frankfort, Kentucky 40602-0798  
Phone: 1.800.928.8926  
Fax: 502.696.7373  
www.kheaa.com

William M. Landrum III  
Secretary

Eugene P. Hutchins  
Executive Director

December 26, 2018

Tariq Habash  
Student Borrower Protection Center  
1015 15<sup>th</sup> St NW #600  
Washington, DC 20005

RE: Open Records Request  
Public Service Loan Forgiveness

Dear Mr. Habash:

I write in response to your above-referenced request dated December 19, 2018. As you may be aware, the Kentucky Open Records Statutes, KRS 61.870, et. seq., afford the recipient of a request thereunder three business days in which to respond. The email to which your request was attached was sent at 5:41 pm on Wednesday, December 19. KHEAA's offices close at 4:30 pm Monday through Friday. As a result, the request was officially received on Thursday, December 20<sup>th</sup>, when the KHEAA offices reopened. Monday, December 24<sup>th</sup>, would be the third business day for statutory purposes. However, all KHEAA offices were closed on the 24<sup>th</sup> and 25<sup>th</sup> for the Christmas holiday. Therefore, this response on Wednesday, December 26, is timely under the statutes.

You have requested all documents, including Dear Colleague Letters, formal guidance and communications, and records from the Department of Education regarding how FFEL lenders or FFEL servicers should communicate with borrowers related to Public Service Loan Forgiveness (PSLF). KHEAA is neither a lender nor servicer under FFEL, but rather a guaranty agency. Nonetheless, both KHEAA's Student Ombudsman and Compliance Manager have confirmed that Dear Colleague Letters are not maintained in-house as a part of the agency's standard operating procedures since these are readily available not only to KHEAA, but to the public, at the Information for Financial Aid Professionals (IFAP) website ([ifap.ed.gov](http://ifap.ed.gov)). As a result, KHEAA does not have documents responsive to this part of the request. Further, both of the above-listed individuals have confirmed that the Department has not issued any specific guidance to guaranty agencies with respect to how they should communicate with borrowers concerning PSLF. Thus, no records responsive to that portion of the request are in KHEAA's custody or control.

Additionally, you have requested copies of responsive documents related to written or oral communication with borrowers who have expressed an intent to pursue PSLF or who inquire about that option. Although KHEAA has previously communicated in writing with borrowers seeking PSLF, these communications have been archived in an imaging system along with all other borrower communications under KHEAA's standard business practice. Records in this system are filed both by borrower name and social security number. However, these are not searchable by the subject matter of the communication. As a result, it is not possible for KHEAA to locate correspondence pertaining to PSLF without either a name or SSN to use in a query. Therefore, while communications related to PSLF are likely contained in KHEAA's imaging system, there is no means to readily locate those documents among the 8,162,432 records contained therein.

Although KHEAA is unable to provide correspondence with specific borrowers as discussed above, I can provide information describing how these requests are handled by my client. When KHEAA receives an inquiry from a borrower regarding PSLF, the written response includes relevant information obtained from the Department's website - <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service#eligible-loans>, as well as the link to that site. Essentially, KHEAA advises the borrower that the loans KHEAA holds – FFEL program loans – are ineligible for the program and instead refers the borrower to the above-listed website for further information and assistance. That website provides information concerning the ability to consolidate FFEL loans into Direct loans in order to take advantage of PSLF.

Regards,

A handwritten signature in black ink, appearing to read 'Miles F. Justice', with a long horizontal flourish extending to the right.

Miles F. Justice, Esq.  
Senior Associate Counsel



Tariq Habash &lt;tariq@protectborrowers.org&gt;

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**FW: FSA Action Complete 19-00566-F**

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**Tariq Habash** <tariq@protectborrowers.org>  
To: "Pedersen, AnnMarie" <AnnMarie.Pedersen@ed.gov>

Mon, Apr 8, 2019 at 2:40 PM

Regarding FOIA number 19-00566-F, I would like to confirm:

- FSA believes it has conducted a comprehensive search for all communications, guidance, records, and documents regarding how FFEL lenders should communicate with borrowers about PSLF. For this to be comprehensive, I would like to further confirm whether this search dates back to the creation of the PSLF program in 2007, or a later date.
- If this was in fact a comprehensive search, does FSA acknowledge that from 2007 to present:
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to respond to questions from borrowers about PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to explain to borrowers that their existing loans were not eligible for PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to help borrowers with FFELP loans become eligible for PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to provide borrowers with FFELP loans, including borrowers who self-identify as teachers, nurses, or members of the military and inquire about benefits, affirmative guidance about existing programs like PSLF that could help alleviate the burden of their student debt.

On Mon, Apr 8, 2019 at 10:31 AM Pedersen, AnnMarie <AnnMarie.Pedersen@ed.gov> wrote:

Hi Tariq,

Here is the closure memo provided by FSA to the FOIA Service Center, which has a more detailed explanation for the "no docs" response. I apologize for the confusion and please don't hesitate to call if you have any additional questions.

Thanks,  
Ann Marie

---

**From:** Wilson, Nathan (Contractor)  
**Sent:** Tuesday, March 19, 2019 11:51 AM  
**To:** ED FOIA Manager  
**Cc:** Pedersen, AnnMarie  
**Subject:** FSA Action Complete 19-00566-F

Good afternoon,

This is to inform you that FSA action is complete for 19-00566-F. Memo is attached, please use the language provided in the attached memo in your final disclosure letter. This is a no records response. Please process accordingly. Thank you.

Sincerely,

Nate Wilson

Office of Communications and Outreach

Federal Student Aid

U.S. Department of Education

830 First Street, NE, Room 22C5

Washington, DC 20202-5361

Phone: (202) 377-4479

[Nathan.wilson@ed.gov](mailto:Nathan.wilson@ed.gov)



Tariq Habash &lt;tariq@protectborrowers.org&gt;

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**FW: FSA Action Complete 19-00566-F**

---

Wilson, Nathan &lt;Nathan.Wilson@ed.gov&gt;

Mon, May 13, 2019 at 4:57 PM

To: "Pedersen, AnnMarie" &lt;AnnMarie.Pedersen@ed.gov&gt;, Tariq Habash &lt;tariq@protectborrowers.org&gt;

Good afternoon Tariq,

I wanted to provide you with our response to your questions below.

· FSA believes it has conducted a comprehensive search for all communications, guidance, records, and documents regarding how FFEL lenders should communicate with borrowers about PSLF. For this to be comprehensive, I would like to further confirm whether this search dates back to the creation of the PSLF program in 2007, or a later date.

Yes, FSA believes it has conducted a complete and reasonable search.

- If this was in fact a comprehensive search, does FSA acknowledge that from 2007 to present:
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to respond to questions from borrowers about PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to explain to borrowers that their existing loans were not eligible for PSLF.
  - ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to help borrowers with FFELP loans become eligible for PSLF.
- ED/FSA never provided guidance to FFEL lenders, loan holders, guaranty agencies, servicers, or trade associations representing any of these entities about how to provide borrowers with FFELP loans, including borrowers who self-identify as teachers, nurses, or members of the military and inquire about benefits, affirmative guidance about existing programs like PSLF that could help alleviate the burden of their student debt.

The Department of Education's administration and oversight of the FFEL Program focus on ensuring that the terms and conditions of FFEL Program loans are properly granted/administered. The expectations of FFEL Program participants is that they provide accurate information to borrowers with questions about their loans, including whether they are eligible loans for the purposes of Public Service Loan Forgiveness. They are expected to obtain that information by remaining aware of IFAP announcements, regulation changes and direct communication with the Department in the event of any ambiguities.

Let me know if you have any additional questions. We appreciate your patience and cooperation as we continue to process your other requests. Thanks!

Sincerely,

Nate Wilson

Office of Communications and Outreach

Federal Student Aid

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**From:** Pedersen, AnnMarie <[AnnMarie.Pedersen@ed.gov](mailto:AnnMarie.Pedersen@ed.gov)>

**Sent:** Monday, April 8, 2019 3:33 PM

**To:** 'Tariq Habash' <[tariq@protectborrowers.org](mailto:tariq@protectborrowers.org)>

**Cc:** Wilson, Nathan <[Nathan.Wilson@ed.gov](mailto:Nathan.Wilson@ed.gov)>

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