August 9, 2022

Mr. Jean-Didier Gaina
U.S. Department of Education
400 Maryland Avenue, SW
Room 2C172
Washington, DC 20202

Submitted via email to www.regulations.gov

RE: Docket ID ED-2021-OPE-0077

Dear Mr. Gaina:

As the trade associations representing the majority of loan providers (guaranty agencies, lenders, and servicers) in the Federal Family Education Loan (FFEL) program, thank you for the opportunity to participate in the 2021-22 negotiated rulemaking activities covering student loans and affordability issues. We share the Department of Education's commitment to greater transparency and clarity, and support improvements to the administration of the federal student financial aid programs that assist and protect students, participating institutions, and taxpayers.

Our attached comments focus on the provisions specific to the FFEL program along with recommendations for technical corrections to provide clarity and consistency to some of the proposed changes to Borrower Defense to Repayment and Public Service Loan Forgiveness.

Thank you for this opportunity to comment. We remain committed to working with the Department in the implementation of these new regulations and development of future regulatory and operational efforts.

Sincerely,

Gail daMota
President
EFC

James Bergeron
President
NCHER

Scott Buchanan
Executive Director
SLSA

**EFC-NCHER-SLSA Comments on Docket ID-ED-2021-OPE-0077**

***Interest Capitalization***

We believe the language within the notice of proposed rulemaking adequately represents the consensus reached during negotiated rulemaking and, as such, we have no additional comments regarding the language as presented at this time.

***Closed School Discharges***

We support the proposed changes to clarify and streamline eligibility requirements as well as clarify existing rules that limit discharges for borrowers who enroll in a comparable program.

***False Certification Discharges***

We support the proposed regulations that would streamline the false certification process by establishing standards that apply to all claims, regardless of when the loan was first disbursed, and providing for a group discharge process.

***Total and Permanent Disability Discharges***

We support the proposed regulations that would allow more borrowers who meet the statutory requirements for one of these discharges to receive a discharge by allowing additional categories of disability determinations by the Social Security Administration to qualify for a discharge. We also support removing the 3-year income monitoring period that currently exists in regulations to allow more borrowers who received a discharge to avoid having their loans reinstated and allowing additional types of medical professionals to certify that a borrower has a total and permanent disability.

***Borrower Defense to Repayment***

We support the proposed sub-regulatory improvements beyond the regulations that would help FFEL borrowers more easily receive a discharge for approved borrower defense claims, further streamlining and simplifying the process for borrowers. We support the proposal to streamline the borrower defense application process by having the application for borrower defense also serve as a Direct Loan consolidation application for borrowers with FFEL and Perkins loans, which would only be executed if the borrower's claim is approved, giving the borrower a streamlined process for receiving discharge of their loans. We also suggest several technical corrections to ensure consistency and clarity. Please see the Appendix on page 6.

***Public Service Loan Forgiveness (PSLF)***

We do not support the proposed changes to §682.414(b)(4) – Records, reports, and inspection requirements for guaranty agency programs.

> §682.414(b)(4)
> (4) A report to the Secretary of the borrower's enrollment and loan status information, details related to the loans or borrower's deferments, forbearances, repayment plans, delinquency and

contact information, or any title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

1. The proposed changes in §682.414(b)(4) are unnecessary because the current regulation already provides authority to the Secretary to collect "any other information concerning its loan insurance program requested by the Secretary" under §682.414(b)(5).

2. The proposed changes in §682.414(b)(4) require a guarantor to report borrower contact information. Lenders and servicers are not required to report contact information to the guarantor; therefore, contact information could be stale and invalid. Additionally, since FFEL borrowers may have multiple guarantors, this adds a certain level of complexity for the Department if borrowers do not update contact information with all guarantors.

3. Under Guarantor Data Provider Instructions from the Department, the FFEL community is already required to provide deferment type (including start and end dates) and forbearance start and end dates. It is not clear how the additional proposed data elements would help target and identify borrowers who need to be notified and/or informed of PSLF.

4. In addition to current outreach by the Department regarding PSLF availability, the FFEL community continues to notify borrowers of PSLF opportunities in accordance with best practices strongly encouraged by the Department, the Consumer Financial Protection Bureau, and some state regulators. See references below. In addition to counseling borrowers, letters, emails, and web site information reflect current PSLF information, including appropriate links to studentaid.gov.

5. Based on feedback from borrowers, we are concerned that increased notices and disclosures will not contribute to better outcomes. Borrowers who are already in the PSLF process/pipeline are expressing confusion and frustration resulting from repeated notifications of PSLF program availability. These general notices do not provide accurate information related to where borrowers may be in the process which causes confusion. Additional letters and emails do not necessarily contribute to increased borrower understanding and/or assurance they will apply.

References

Department of Education (item 4)


March 30 update to December 7 DCL.pdf


FFEL 22 01.pdf


Top 10 talking points for PSLF waiver.pdf

Consumer Financial Protection Bureau (item 4)


cfpb_bulletin_2022-03_servicer-responsibil

New York Division of Financial Services (item 4)

https://www.dfs.ny.gov/industry_guidance/industry_letters/il20220713_pslf

PSLF and Loan Consolidation

Our view of section 455(m)(1)(A) of the Higher Education Act (HEA) is that authority to cancel the balance of a Direct Loan for public service employees can only be for a borrower who makes 120 payments on ***the*** Direct Loan (i.e., for which the borrower requests forgiveness). This means that a payment on a non-Direct Loan (e.g., FFEL or Perkins) is not a payment that counts toward forgiveness and means that a payment on any loan that is consolidated (e.g., FFEL, Perkins, or Direct) is not a payment that counts toward forgiveness. This interpretation reinforces the Department's longstanding application of the HEA that payment toward forgiveness is "loan-based," meaning that 120 payments must occur on each of a borrower's individual Direct Loans before a Direct Loan balance may be forgiven. HEA 455(m)(3)(A) defines an "eligible Federal Direct Loan" to be either a Federal Direct Stafford Loan, Federal Direct PLUS Loan, Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan.

References

1. Proposed Rule Preamble Page 41936 (07-13-22) – **"**These negotiators also wanted the Department to allow payments made on FFEL Program loans that are repaid through a Direct Consolidation Loan to count toward PSLF forgiveness. Under the current interpretation of the law, the 120 monthly payments have to be made on the loan for which the borrower requests forgiveness. So, a borrower who consolidates a Direct Loan and later applies for forgiveness of the Consolidation Loan does not receive credit for payments made on the loan before it was consolidated. However, the negotiators advanced a different interpretation of the HEA, suggesting that counting payments made on loans later consolidated into the Direct Loan Program and regardless of whether the loan consolidated was a Direct Loan would also be a permissible interpretation of the HEA."

2. Proposed Rule Preamble Page 41937 (07-13-22) **-** The Department could not agree to the negotiators' request that payments on FFEL loans or other federal student loans not made under Part D of the HEA count for PSLF purposes. Section 455(m)(1)(A) of the HEA specifically provides that the 120 monthly payments must have been made on an eligible Federal Direct Loan.

3. HEA 455(m)

   REPAYMENT PLAN FOR PUBLIC SERVICE EMPLOYEES.—
   (1) IN GENERAL.—The Secretary shall cancel the balance of interest and principal due, in accordance with paragraph (2), on any eligible Federal Direct Loan not in default for a borrower who—
   (A) has made 120 monthly payments on the eligible Federal Direct Loan after October 1, 2007, pursuant to any one or a combination of the following:
   (i) payments under an income-based repayment plan under section 493C;
   (ii) payments under a standard repayment plan under subsection (d)(1)(A), based on a 10-year repayment period;

(iii) monthly payments under a repayment plan under subsection (d)(1) or (g) of not less than the monthly amount calculated under subsection (d)(1)(A), based on a 10-year repayment period;
(iv) payments under an income contingent repayment plan under subsection (d)(1)(D); and
(B)(i) is employed in a public service job at the time of such forgiveness; and
(ii) has been employed in a public service job during the period in which the borrower makes each of the 120 payments described in subparagraph (A).
(2) LOAN CANCELLATION AMOUNT.—After the conclusion of the employment period described in paragraph (1), the Secretary shall cancel the obligation to repay the balance of principal and interest due as of the time of such cancellation, on the eligible Federal Direct Loans made to the borrower under this part.
(3) DEFINITIONS.—In this subsection:
(A) ELIGIBLE FEDERAL DIRECT LOAN.— The term 'eligible Federal Direct Loan' means a Federal Direct Stafford Loan, Federal Direct PLUS Loan, or Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan.

4. FSA Web (10-09-18) and ED PSLF Q&A (02-03-10) – "PSLF is only available for Direct loans. A FFELP loan does not qualify for PSLF. If a FFELP loan is consolidated into a Direct Consolidation Loan, only qualifying payments made on the new Direct Consolidation Loan can be counted toward the 120 payments required for PSLF (i.e., any payment made on the FFELP loan before it was consolidated does not count)."

5. Final Rule Preamble Page 63242 (October 23, 2008) – "Additionally, even if a borrower consolidates, the borrower may not be eligible to apply for the loan forgiveness benefit until many years after the consolidation, if at all."

6. 2008 Negotiated Rulemaking – The Department's negotiators made clear that time toward loan forgiveness is "loan-based" (i.e., 120 payments must occur for each loan before a loan balance may be forgiven).

We also suggest a couple of PSLF technical corrections to ensure clarity. Please see the Appendix on page 6.

***Appendix – Technical Corrections***

Borrower Defense to Repayment

We suggest the Department review for consistency and clarity, the new proposed Subpart D in Part 685 Federal Direct Loan Program. Examples include the following:

Throughout the new Subpart D, the proposed language frequently uses "shall." We recommend all references should be reviewed and recrafted, as appropriate, to use "may" or "will" or "must" depending on the Department's intent with each usage.

Sections 685.403(d)(2), (e)(1) and (2) are examples of language that states the Department will grant forbearance (or suspend collections) on "all of the borrowers defaulted Title IV loans;" however, the changes are only specific to Part 685 Federal Direct Loans yet the use of the words "all non-defaulted Title IV loans" implies it also applies to FFEL and Perkins which is incorrect. We recommend the language in the applicable sections of 685 reference Direct Loans and not "Title IV loans."

Public Service Loan Forgiveness

§685.219 (b) - A new definition of "Non-governmental public service" was created that includes a closing sentence that reads: "Service as a member of the U.S. Congress is not qualifying public service employment for purposes of this section." This sentence does not fit in the new definition as a member of the U.S. Congress is a governmental employee. In existing regulations, this sentence is included in the definition of "Government employee," but "Government employee" was removed altogether under the proposed regulations. Either the definition of "Government employee" should be reinserted, or this sentence should be moved to be included somewhere else. We suggest in romenette i of the definition of "Qualified employer" which currently reads: "A United States-based Federal, State, local, or Tribal government organization, agency, or entity, including the U.S. Armed Forces or the National Guard;".

§685.219 (g) – The new section on the reconsideration process outlines that "Borrowers who were denied loan forgiveness under this section after October 1, 2017, and prior to [EFFECTIVE DATE OF FINAL RULE] have 180 days from **that date** to request reconsideration" (emphasis added). We assume "that date" refers to the Final Rule so that borrowers get 180 days from the effective date of the Final Rule; however, this is unclear since it does not define what "that" date refers.