



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

Via email

October 4, 2018

The Honorable Elisabeth DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

James F. Manning
Acting Chief Operating Office
Federal Student Aid

RE: Problems in the Public Service Loan Forgiveness Program Must Be Addressed

Dear Secretary DeVos,

We, the undersigned attorneys general of Illinois, California, Connecticut, the District of Columbia, Iowa, Kentucky, Maryland, New Jersey, New York, Oregon, Pennsylvania, and Washington write to you today to express our profound concern over the exceedingly small percentage of public service loan forgiveness (PSLF) applications that have been granted in the year since borrowers first became eligible for the program. Only 96 people, out of over 28,000 applicants, have had their loans forgiven according to data released last month by the Department – less than 1%.¹

This exceedingly small percentage of discharged loans is alarming. Thousands of consumers contact our offices every year with problems paying their student loans, including borrowers with issues regarding their PSLF applications. Even closer to home, offices working for the public good, like our own, depend upon the PSLF program to attract and retain top talent. These dedicated public servants have the right under federal law to make affordable student loan

¹ Department of Education Public Service Loan Forgiveness Data August 2017 report, available at <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data>. See also <https://www.ed.gov/news/press-releases/department-education-releases-new-public-service-loan-forgiveness-application-data>.

payments and to obtain loan forgiveness after a decade of service.² Without this program, many people who work in the public interest would be unable to repay their student loans.

Diligent borrowers relied on the PSLF program to help them realize their dream of working in a field to help the public good. Those borrowers thought they were doing everything right. They took the steps they thought they needed to take, believing that the PSLF program would help make their life of service feasible and affordable. Borrowers whose PSLF program applications have been denied after a decade of payments experience profound and damaging economic consequences.

Many of these borrowers are now being told their only remedy is to start over, which is unacceptable. In short, the Department's failure to keep its promise to borrowers who relied on the PSLF program requires immediate action. As a starting point, borrowers desperately need more accurate information about the program. Student loan servicers need to insure that borrowers know the program requirements and how to fulfill them. This need was recently highlighted by the American Federation of Teachers lawsuit against Navient for failing to provide adequate information to borrowers seeking to qualify for PSLF.

This letter is not the first time your office has been made aware of serious deficiencies in the implementation of the PSLF program. In 2017, Illinois Attorney General Lisa Madigan wrote to you seeking an explanation regarding two troubling trends that were emerging in the PSLF program. First, the Department's definition of what constitutes an eligible employer is uncertain. Individual borrowers cannot rely upon the certifications of the Department and its servicers. Second, Department data from 2016 indicated that over 250,000 students had not made a single qualifying payment.³

The Illinois Attorney General's Office did not receive a response, nor does it appear that the Department took any steps to address these problems. Just last month, the Government Accountability Office (GAO) raised nearly identical concerns in a report on the PSLF program. For example, the GAO found that in April 2018 over half of borrowers who sought to have their employer and loans certified had not made a single qualifying payment or did not meet basic eligibility requirements.⁴ In addition, the GAO found that the Department provides borrowers with information on whether an employer qualifies only *after* borrowers accept jobs and submit certification forms, limiting borrowers' ability to plan for their financial futures.⁵

The shocking 99% PSLF program denial rate is quite simply unacceptable, and borrowers need fixes for the program now. The Temporary Expanded PSLF program made possible by a \$350 million Congressional appropriation is a step in the right direction. It does not, however, address one of the fundamental problems facing borrowers in the near term: Federal Family Education Loans Program (FFELP) loans do not qualify for the PSLF program. Until 2010 when the

² 20 U.S.C. § 1087e(m).

³ April 21, 2017 letter, pg. 2.

⁴ Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers, United States Government Accountability Office, pg. 11, September 2018, available at <https://www.gao.gov/assets/700/694304.pdf>.

⁵ *See id.*, pg. 20.

program was discontinued, many borrowers took out FFELP loans. Any borrower who has potentially made ten years of payments as of today, necessarily took out loans prior to 2010, many of which would have been FFELP loans. These FFELP borrowers should not be made to consolidate their loans into Direct loans today and make another ten years of payments. To do so would be fundamentally unfair. It would also violate the very purpose of the program, which is to allow borrowers in public service to repay their loans on the standard ten year time frame without enduring unnecessary hardship.⁶ We invite you to join us in calling on Congress to expand the Temporary Expanded PSLF program to cover borrowers with FFELP loans.

In the longer term, more information is necessary to diagnose and fix these serious problems. Indeed, the GAO recommended that the Department provide borrowers with more information on the PSLF program, including “sufficiently detailed information from the PSLF servicer to be able to identify any errors in the servicer’s counts of qualifying payments, including information on whether or not each payment qualified toward forgiveness.”⁷ This is exactly the type of information Illinois Attorney General Madigan called for borrowers to receive in her April 2017 letter to you. In addition, the GAO recommended the Department provide borrowers access to its database of qualifying employers. Finally, servicers need to insure that borrowers know the program requirements and how to fulfill them, as discussed above.

Furthermore, state attorneys general need information on the scope and the sources of the problem. Consumer protection is our primary role in the triad that governs higher education. As more and more borrowers become potentially eligible for this program, the problems that caused less than one percent of applications to be approved are only going to grow. When borrowers learn that they are not eligible for the PSLF program for which they have worked so hard to qualify, they turn to states for assistance. Direction by the Department to its servicers to refuse to provide the states with data related to federal student loans exacerbates this problem.⁸

States must help the borrowers the Department has left behind while the Department takes necessary steps to improve the PSLF program. The states must have data to do so, and the Department must provide it. Consequently, we are requesting that you provide our offices with the following information, broken down by state,⁹ with which to determine the scope and sources of the problems:

1. The total dollar value of loans which were denied discharge under the PSLF program;

⁶ “Staying On Track While Giving Back: The Cost Of Student Loan Servicing Breakdowns For People Serving Their Communities,” Consumer Financial Protection Bureau June 2017 Report, pg. 22.

⁷ Education Needs to Provide Better Information for the Loan Servicer and Borrowers, *supra* note 3, pg. 16, available at <https://www.gao.gov/assets/700/694304.pdf>.

⁸ See Order Granting State of Washington’s motion for an Order Compelling Production of Documents, *State of Washington v. Navient Corp., et al.*, No. 17-2-01115-1-SEA (King County Superior Court September 21, 2018) (ordering Navient to produce federal student loan borrower data over the objections of the Department of Education); August 17, 2018 letter from Pennsylvania Attorney General to The Honorable Robert D. Mariani, *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-01814-RDM (challenging Navient’s refusal to produce federal student loan borrower data based on the Department of Education’s refusal to provide that same data to Navient).

⁹ All requested information to be produced in aggregate form, free of personally identifiable information.

2. Average length of time for processing a single application for loan discharge under the PSLF program;
3. Of the 20,521 applications denied “due to not meeting program requirements,” provide a breakdown of the type of program requirements that could not be met as well as the number of applications denied for not meeting that specific program requirement;
4. For any application identified in ¶ 3 above, please identify:
 - a. The total number of borrowers put into forbearance during the pendency of their PSLF application;
 - b. The total number of distinct loans put into forbearance during the pendency of the borrower’s PSLF application;
 - c. The amount of interest capitalized on all loans identified in ¶ 4b;
 - d. The total number of borrowers who consolidated their loans during the pendency of their PSLF application;
5. Of the 8,103 applications denied “due to missing information,” provide a breakdown of the type of information that could be missing from an application as well as the number of applications missing that specific type of information;
6. For all applications, please identify the following:
 - a. The total number of applications claiming employment with the government, broken down by the applicable level of government employment (i.e. federal, state, city, etc.);
 - b. The total number of applications claiming employment with a not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code;
 - c. The total number of applications claiming employment at a private not-for-profit organization that provides certain public services, broken down by type of service provided;
 - d. The total dollar value of loans sought to be discharged;
 - e. The total number of applicants with a given income, broken down into groups for every \$10,000 in income;
7. For approved applications, please identify the following:

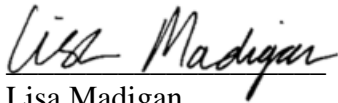
- a. The total number of applications claiming employment with the government, broken down by the applicable level of government employment (i.e. federal, state, city, etc.);
 - b. The total number of applications claiming employment with a not-for-profit organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code;
 - c. The total number of applications claiming employment at a private not-for-profit organization that provides certain public services, broken down by type of service provided;
8. For applications denied on the basis of the non-qualification of the applicant's employer, please identify the following:
- a. The total number of applications denied based on the non-qualification of the applicant's employer, including identifying the servicer of the loans for each of those applications;
 - b. The types of employment deemed non-qualifying and the number of applications claiming each type of non-qualifying employment;
 - c. The total number of payments made by applicants at non-qualifying employment;
 - d. The total amount of payments made by applicants at non-qualifying employment;
 - e. The average number of payments made by applicants at non-qualifying employment;
 - f. The average amount of payments made by applicants at non-qualifying employment;
 - g. The number of applicants who received certifications of employer eligibility by the Department;
 - h. Of the individuals identified in ¶ 8(g) above, the number of individuals to whom the Department or any servicer sent letters retracting previous certifications of employer eligibility;
 - i. Of the individuals identified in ¶ 8(g) above, the average number of otherwise qualifying payments made per applicant under those revoked certifications.
9. For applications denied for seeking to include as qualifying payments those payments made in non-qualifying repayment plans, please identify the following, broken down by payment plan:

- a. The total number of applications denied for including payments made under a non-qualifying plan, including identifying the number of applications denied on this basis whose loans were serviced by each servicer;
 - b. The total number of payments made under the non-qualifying plan;
 - c. The total amount of payments made under the non-qualifying plan;
 - d. The average number of payments made under the non-qualifying plan;
 - e. The average amount of payments made under the non-qualifying plan.
10. For applications denied for failing to have qualifying loan types, please identify the following, broken down by loan type:
- a. The total number of applications denied for failing to have a qualifying type of loan, including identifying the number of applications denied on this basis whose loans were serviced by each servicer;
 - b. The total number of payments made on the non-qualifying loan;
 - c. The total amount of payments made on the non-qualifying loan;
 - d. The average number of payments made on the non-qualifying loan;
 - e. The average amount of payments made on the non-qualifying loan;
11. For applications denied for failing to make 120 qualifying payments, please identify the following:
- a. The total number of applications denied for including less-than-full payments, including identifying the number of applications denied on this basis whose loans were serviced by each servicer;
 - b. The total number of payments made that were considered less-than-full payments;
 - c. The total amount of payments made that were considered less-than-full payments;
 - d. The total number of applications denied for including payments that were considered not “on time” as defined in 34 CFR § 685.219, including identifying the number of applications denied on this basis whose loans were serviced by each servicer;
 - e. The total number of payments made that were considered not “on time” as defined in 34 CFR § 685.219;

- f. The total amount of payments made that were considered not “on time” as defined in 34 CFR § 685.219;
 - g. The total number of borrowers that changed their loan servicer during the pendency of their PSLF application;
12. For all denied applications, please indicate the total number of borrowers referred to the Temporary Expanded Public Service Loan Forgiveness Program.

Many people, including people in our offices and we are certain in yours as well, rely on the PSLF program in order to pursue careers in public service while providing secure financial futures for themselves and their families. These people have dedicated their lives to the service of others, often forgoing more lucrative careers in the private sector.¹⁰ They depend on the information about the program provided by the Department and its servicers. The Department needs to take immediate action in order to do right by these student loan borrowers. We look forward to your prompt response to our inquiries.

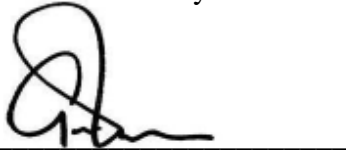
Sincerely,




Lisa Madigan
Illinois Attorney General



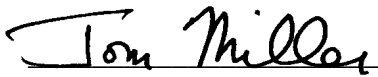
Xavier Becerra
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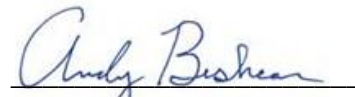
George Jepsen
Connecticut Attorney General



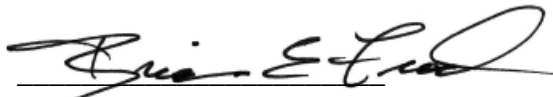
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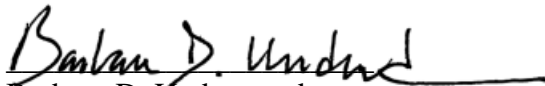



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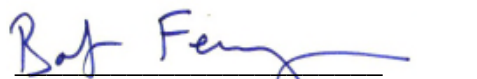
Gurbir S. Grewal
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¹⁰ “Staying On Track While Giving Back: The Cost Of Student Loan Servicing Breakdowns For People Serving Their Communities,” Consumer Financial Protection Bureau June 2017 Report, pp. 23-24.


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