America's Unforgiving Forgiveness Program: Problems and Solutions for Public Service Loan Forgiveness

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In the first three years of Public Service Loan Forgiveness (PSLF), over 227,000 borrowers applied for relief. The U.S. Department of Education granted relief to less than 3800 borrowers, denying forgiveness to roughly 98% of the program's applicants. This astronomically high rejection rate raises questions of responsibility for the program's initial failure. Many have blamed the Trump Administration for using its political influence to manufacture an unforgiving result. However, a purely political explanation for the program's failure provides an incomplete illustration of the reasons underlying PSLF's demise.

This Note examines the numerous pitfalls that resulted in PSLF's unforgiving forgiveness rate. Specifically, it reviews the program's development, from its creation in the halls of Congress, to various refinements developed under the Obama Administration, and the Trump Administration's management of the program. Through this analysis, this Note raises two core issues underlying PSLF. First, the program contains a statutory and regulatory framework that appears oblivious to the realities of federal student loan repayment. Combining this disastrous framework with the second issue, the Trump Administration's apathetic execution of the program, created a scenario that doomed borrowers seeking forgiveness.

Ultimately, this Note recommends that Congress and the Department of Education develop comprehensive, multi-pronged reforms to address the program's numerous problems. PSLF is more than just a borrower-friendly program; it provides vital recruitment incentives for public service employers who serve as the backbone of the nation's communities. These reforms, if implemented, would create a robust and accommodating program that would successfully deliver loan forgiveness to our nation's dedicated public servants.

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INTRODUCTION

> There are many different provisions in the legislation, and we will come to grips with those as the morning goes on, but this is saying to the young people: If you finish up in school and college and you have debt and you want to become a schoolteacher, you want to work in the criminal justice system, you want to work with special needs children, you want to work for a nonprofit, you will never pay more than 15 percent of your income in repayment of your debt. And after a period of years, a 10-year period of time, your debt will be forgiven in full–completely. . . . This is an incentive for young people to be able to go into public service and serve their community. I think it is enormously important and responsive to the time. . . . [T]his is a matter of enormous importance. It is a matter of enormous consequence.[1]

On September 7, 2007, the College Cost Reduction and Access Act (CCRAA) cleared its final legislative hurdle in the U.S. Congress. In the morning, during seventy-two minutes of debate, senators highlighted the crucial student loan relief that the bill offered to public servants.[2] Shortly thereafter, the reconciled bill passed the Senate on a 79–12 margin.[3] That afternoon, the bill sailed through the House of Representatives on a 292–97 vote.[4] Twenty days later, President Bush signed the CCRAA into law,[5] creating Public Service Loan Forgiveness (PSLF).

At first glance, the requirements of PSLF appear simple. Under the program, the U.S. Department of Education (USED) forgives the student loan balance of a borrower who makes 120 income-driven, on-time monthly payments on a federal Direct Loan while working for a qualifying public service employer.[6] Simplified, a borrower who holds a qualifying loan receives complete, tax-exempt student loan forgiveness after ten years of public service and loan payments.

PSLF appealed to and attracted many borrowers. Between October 2017 and November 2020,[7] 227,382 unique borrowers applied for forgiveness.[8] Yet

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1. 153 CONG. REC. S11,242 (daily ed. Sept. 7, 2007) (statement of Sen. Ted Kennedy).

2. Seven senators mentioned "public service" in their CCRAA floor speeches. *Id.* at S11,241–56 (statements of Sens. Ted Kennedy, Sherrod Brown, Patty Murray, Barbara Boxer, Chris Dodd, Russ Feingold, and Jeff Bingaman). Senator Clinton also mentioned "public service" but did not speak during the debate; she was campaigning for the 2008 Democratic presidential primary and later inserted her comments into the Congressional record. *Id.* at S11,249 (statement of Sen. Hillary Clinton).

3. *Id.* at S11,256.

4. 153 CONG. REC. H10307–08 (daily ed. Sept. 7, 2007).

5. Press Release, White House, President Bush Signs H.R. 2669 and H.R. 3580 into Law (Sept. 27, 2007), https://georgewbush-whitehouse.archives.gov/news/releases/2007/09/20070927-5.html.

6. 20 U.S.C. § 1087e(m).

7. This time period reflects the time between when the USED began accepting PSLF applications, and the latest dataset available at the time of publication.

8. See rows 8 and 16 of the November 2020 PSLF Data Report. *Public Service Loan Forgiveness Data*, FED. STUDENT AID, https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data (last visited Feb. 25, 2021) [hereinafter *November 2020 PSLF Data Report*] (click "November 2020 Report" hyperlink to download).

the USED denied relief to 223,606 of those applicants—a rejection rate of over 98%.[9] In other words, just 1.66% of applicants received relief.[10] That statistic is the epitome of a failed policy.

Table 1: PSLF Application Processing Data (as of November 2020)[11]

Unique Borrowers Submitting PSLF Applications	227,382
Unique Borrowers with PSLF Discharges Processed	3776 (~1.66% of borrowers)
Unique Borrowers Currently Denied Relief	223,606 (~98.34% of borrowers)

PSLF delivered significant student debt relief to successful applicants. As of November 2020, the USED has collectively discharged over $290 million in debt,[12] an average relief of $76,906 per borrower.[13] The existence of successful applicants could lead one to argue that the program is operating as it should.[14] Yet a rejection rate that, after three years of processing, hovers around 98% signals that borrower carelessness is likely not the underlying issue to PSLF's problems. Indeed, the search for alternative explanations has led to political finger-pointing, characterized in an April 2019 *New York Times* article:

> In a budget hearing last month, Senator Jeff Merkley, Democrat of Oregon, grilled Betsy DeVos, the [S]ecretary of [E]ducation, over the sorry state of the Public Service Loan Forgiveness program . . . . Ms. DeVos said Congress had made it difficult to qualify, while Mr. Merkley insisted that the Education Department wasn't holding servicers accountable for poor customer service.[15]

In truth, both Senator Merkley and then-Secretary DeVos correctly noted issues within PSLF. The program's numerous problems include faulty statutes and regulations, shifting interpretations of qualifying standards, and inadequate

9. In the November 2020 PSLF Data Report, *id.*, subtract borrowers who received forgiveness (row 16) from the total number of borrowers (row 8). That amounts to 223,606 denied borrowers; divide that by the total number of borrowers (row 8) to calculate a rejection rate of roughly 98.34% (or an acceptance rate of 1.66%). *See id.*

10. *See* discussion and arithmetic *supra* notes 8–9.

11. *November 2020 PSLF Data Report*, *supra* note 8 (calculating data from rows 8, 11, 12, 13, and 16).

12. *See id.* (row 15).

13. *See id.* (row 17).

14. For example, former U.S. Secretary of Education Betsy DeVos, while testifying before the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, stated, "The rules that [Congress] set up, the legislation [Congress] passed, make [receiving PSLF relief] difficult. So within that context, we are forgiving as many student loans [sic] under the Public Service Loan Forgiveness program as are qualified for." *Education Department Fiscal Year 2020 Budget Request* (CSPAN television broadcast Mar. 28, 2019), https://www.c-span.org/video/?459264-1/senators-press-education-secretary-devos-proposed-budget-cuts (quote begins at 1:33:05).

15. Ron Lieber, *Your Student Loan Servicer Will Call You Back in a Year. Sorry.*, N.Y. TIMES (Apr. 12, 2019), https://www.nytimes.com/2019/04/12/your-money/public-service-loan-forgiveness.html.

oversight over loan servicers. Yet many have isolated the program's core issue as one of political interference, accusing the Trump Administration of "deliberate sabotage" to PSLF.[16]

Certainly, the Trump Administration cannot absolve itself of blame for the program's failure. President Trump's USED repeatedly threatened[17] to eliminate PSLF and slowed the program's effectiveness by adopting narrow interpretations of qualifying public service[18] and obstructing oversight over student loan servicers.[19] However, solely blaming the Trump Administration is an incomplete diagnosis of the program's problems.

This Note argues that PSLF's current problems stem from the program's dysfunctional origin: a poorly designed statutory and regulatory framework that was incompatible with the capabilities of America's student loan system. Congress and the USED mandated loans that, at the time, were uncommon and unpopular among borrowers.[20] As a result, current PSLF applicants, who started their paths toward forgiveness a decade ago, began their qualification at a time when the nation's student loan infrastructure was a poor fit for the program's requirements.

This issue made the program a ticking time bomb for any USED that inherited it. PSLF's statute and implementing regulations are written in rigid terms,[21] preventing a potentially sympathetic USED official from leniently applying rules and granting forgiveness to more borrowers. Instead, the statute enforces prerequisites that current applicants are unlikely to meet. PSLF's high rejection rates are the result of a catastrophic combination between the program's faulty framework and the Trump Administration's exacerbating actions.

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16. Press Release, Am. Fed'n of Teachers, AFT President Randi Weingarten Slams Education Department for Deliberate Sabotage of Public Service Loan Forgiveness (Apr. 3, 2019), https://www.aft.org/press-release/aft-president-randi-weingarten-slams-education-department-deliberate.

17. In every budget proposed under the Trump Administration, the USED has sought to eliminate the PSLF program. *See* Tom Anderson, *Trump's Budget Seeks to Eliminate One Major Benefit of Federal Student Loans That Costs Billions*, CNBC (May 24, 2017, 7:39 PM), https://www.cnbc.com/2017/05/24/trumps-budget-seeks-to-cut-one-major-benefit-of-federal-student-loans.html; Annie Nova, *Trump's Budget Would End Student Loan Forgiveness Program*, CNBC (Feb. 13, 2018, 5:54 PM), https://www.cnbc.com/2018/02/12/trumps-budget-would-end-student-loan-forgiveness-program.html; Annie Nova, *Education Dept. Faces 10% Funding Cut Under Trump's 2020 Budget Proposal*, CNBC (Mar. 12, 2019, 1:37 PM), https://www.cnbc.com/2019/03/11/trumps-budget-proposal-would-cancel-public-service-loan-forgiveness.html; Annie Nova, *Trump Looks to Kill Student Loan Forgiveness Program*, CNBC (Feb. 11, 2020, 10:46 AM), https://www.cnbc.com/2020/02/10/trump-proposes-end-to-student-loan-forgiveness-program.html.

18. *See* discussion *infra* Part II.B.1.

19. *See* discussion *infra* Part II.B.2.

20. *See* discussion *infra* Part II.A.1.

21. For example, PSLF's statute specifies that only payments made on Direct Loans will qualify for the program, disqualifying payments made on other types of loans (such as Perkins Loans or Federal Family Education Loans). 20 U.S.C. § 1087e(m)(1)(A). For a discussion of the consequences of these rigid requirements in the PSLF context, see *infra* Part II.A.

Once all of PSLF's problems are identified, what should be done to fix it? The political realm abounds with suggestions. Republicans have sought to axe the program in its entirety.[22] Democrats have recommended broadening the program's requirements to allow more borrowers to qualify for forgiveness.[23] Some scholars have suggested that no action is necessary, hypothesizing that Obama-era reforms[24] will allow the program to correct itself.[25] The spectrum of proposed solutions highlights the political interests and administrative issues rooted within PSLF and illustrates the need for a comprehensive solution.

To address PSLF's immediate problems, Congress and the USED should implement a multi-pronged policy that eases the program's rigid requirements and diminishes the control that loan servicers possess. First, Congress should pass legislation allowing all federal loans and repayment plans to qualify for forgiveness. Doing so would broaden the program's scope, as it currently limits relief to individuals who hold a particular type of federal loan and payment plan.[26]

While Congress reforms the program's requirements, the USED should promulgate two rulemakings. First, it should develop precise definitions and categories for qualifying "public service" positions. Clear definitions would reduce uncertainty among borrowers, who currently face shifting interpretations over which positions qualify for forgiveness. Second, the USED should design regulations which (1) mandate loan servicer oversight, (2) increase the number of servicers which manage PSLF loans, and (3) allow borrowers to change servicers. Implementing these rulemakings would decrease the monopoly that each servicer currently holds over its borrowers and create economic incentives to encourage servicers to provide optimal customer service.

These changes would allow PSLF's benefits to flow to a greater number of student borrowers, creating an impetus for further reform. A wave of program successes would catalyze the need for more innovative changes, such as a web-based platform for collecting payments and tracking progress toward forgiveness. PSLF successes would also incentivize other entities, including higher education institutions, to promote[27] the program to students. These

22. *See* discussion *supra* note 17.

23. Annie Nova, *Bill May Help Millions Qualify for Popular Public Service Loan Forgiveness Program*, CNBC (Apr. 11, 2019, 5:08 PM), https://www.cnbc.com/2019/04/11/bill-may-help-millions-qualify-for-popular-public-service-loan-forgiveness-program.html.

24. *See* discussion *infra* Part I.B.

25. *See* Gregory Scott Crespi, Why Are 99% of the Applications for Debt Discharge Under the Public Service Loan Forgiveness Program Being Denied, and Will This Change? 31 (June 17, 2019) (unpublished manuscript), https://ssrn.com/abstract=3397656 ("[A]pproval rates . . . will surely rise significantly over time, if only because each year an increasingly large proportion of outstanding federal student loans . . . are the Direct Loans which are eligible for forgiveness . . . and because each year a rapidly increasing proportion of borrowers enroll in eligible income-based loan repayment programs . . . ."); *see also* Hornsby, *infra* note 180.

26. 20 U.S.C. § 1087e(m)(1)(A).

27. PSLF, generally, suffers from a dearth of promotion to students. *See* Allesandra Lanza, *How You Can Requalify for Public Service Loan Forgiveness*, U.S. NEWS & WORLD REP.: EDUC. (Apr. 4, 2018, 10:00 AM),

advancements, if executed properly, would sharpen PSLF to serve as a powerful loan forgiveness program that benefits student borrowers, public service employers, and communities across the nation.

This Note explains why Public Service Loan Forgiveness has denied relief to over 98% of applicants and illustrates how particular reforms can address the program's shortcomings. Part I lays the groundwork with an overview of the program's origin and development. Part II discusses the major problems, embedded in PSLF's originating framework and the Trump Administration's management, that have contributed to the program's high rejection rate. Part III examines why action is needed to fix PSLF's problems and explains the program's importance for borrowers and public service employers. Part IV concludes by providing a policy blueprint to refine PSLF into a comprehensive initiative that delivers its promise of student loan forgiveness for public servants.

I. THE DEVELOPMENT OF PUBLIC SERVICE LOAN FORGIVENESS

PSLF has had a short, yet turbulent, history. After its creation, the program experienced both impactful reform and undermining interference during the following two presidential administrations.[28] Understanding the nuances of PSLF's development, detailed below, is critical to identifying the program's problems and areas for reform.

A. BIPARTISAN BEGINNINGS, PARTISAN PRODUCT

In January 2007, congressional Republicans, fresh off "a thumping"[29] in the midterm elections, returned to Capitol Hill as the minority party in both the House and Senate.[30] Their Democratic counterparts planned an ambitious agenda to counter President George W. Bush's priorities.[31] However, a harsh reality quickly chilled this ambition: Democrats lacked the necessary votes to override President Bush's vetoes.[32] If congressional Democrats wanted to achieve their ambitious vision, they had to work with Republicans in a bipartisan manner.

This predicament extended to addressing the nation's escalating student debt crisis. College costs were rapidly increasing across the nation,[33] forcing

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https://www.usnews.com/education/blogs/student-loan-ranger/articles/2018-04-04/how-student-loan-borrowers-can-requalify-for-public-service-loan-forgiveness.

28. *See* discussion *infra* Part I.B, I.C.

29. The President's News Conference, 2 PUB. PAPERS 2052, 2058 (Nov. 8, 2006).

30. John M. Broder, *Democrats Gain Senate and New Influence*, N.Y. TIMES (Nov. 10, 2006), https://www.nytimes.com/2006/11/10/us/politics/10elect.html.

31. Carl Hulse, *Democrats Plan First 100 Hours, Give or Take a Speech*, N.Y. TIMES (Jan. 3, 2007), https://www.nytimes.com/2007/01/03/washington/03cong.html.

32. Charles Babington, *Bush Wields Vetoes to Block Democrats*, WASH. POST. (Sept. 24, 2007, 11:09 AM), https://www.washingtonpost.com/wp-dyn/content/article/2007/09/24/AR2007092400108.html.

33. *See* COLL. BD., TRENDS IN HIGHER EDUCATION SERIES: TRENDS IN COLLEGE PRICING 7 figs.3 & 4 (2006), https://research.collegeboard.org/pdf/trends-college-pricing-2006-full-report.pdf.

students to turn to both federal and private loans to afford a higher education.[34] The concept of students taking out private loans alarmed Americans, as the private lending industry epitomized significant debt and few borrower safeguards.[35] This crisis, if left unchecked by government action, threatened to submerge students into alarming amounts of debt just to obtain a college degree.

Amid mounting public concern, the House Committee on Education and Labor (HCEL) and Senate Committee on Health, Education, Labor, and Pensions (HELP) sprung to action. Working in a bipartisan manner, the (Democrat) Chairpersons and (Republican) Ranking Members of HCEL (Representatives George Miller and Buck McKeon, respectively)[36] and HELP (Senators Ted Kennedy and Mike Enzi, respectively)[37] spearheaded proposals in their respective chambers. In July 2007, the House[38] and Senate[39] passed their respective versions of the College Cost Reduction and Access Act of 2007 (CCRAA). Shortly thereafter, the House and Senate convened a conference committee to resolve differences between the two versions.[40]

In addition to the challenges of reconciliation, the CCRAA faced opposition from the President. Before the House's vote, President Bush released a Statement of Administration Policy (SAP) threatening to veto the bill because it failed "to target aid to the neediest students" and created "new mandatory Federal programs and policies that are poorly designed and would have significant long-term costs to the taxpayer."[41] In a later SAP, Bush also signaled a veto of the Senate's version of the CCRAA, but indicated his desire to work "with Congress to resolve these issues through the legislative process."[42] This last statement set the stage for compromise and bipartisanship.

Instead, Miller and Kennedy led congressional Democrats in the opposite direction. Over the next month, Democrats ironed out differences with "virtually no input" from Republicans.[43] In September 2007, Democratic

34. *See* Donald E. Heller, *The Impact of Student Loans on College Access*, *in* THE EFFECTIVENESS OF STUDENT AID POLICIES: WHAT THE RESEARCH TELLS US 39, 41 fig.1 (Sandy Baum, Michael McPherson & Patricia Steele eds., 2008).

35. Diana Jean Schemo, *Student Loans Deepen a Crisis in Student Debt*, N.Y. TIMES (June 10, 2007), https://www.nytimes.com/2007/06/10/us/10loans.html.

36. 153 CONG. REC. H39 (daily ed. Jan. 4, 2007).

37. 153 CONG. REC. S501–02 (daily ed. Jan. 12, 2007).

38. 153 CONG. REC. H7558 (daily ed. July 11, 2007).

39. 153 CONG. REC. S9661 (daily ed. July 20, 2007).

40. Amit R. Paley, *Senate Approves Overhaul of Student Loan Program*, WASH. POST. (July 20, 2007), https://www.washingtonpost.com/wp-dyn/content/article/2007/07/19/AR2007071902389.html.

41. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY: H.R. 2669—COLLEGE COST REDUCTION ACT OF 2007 (2007), https://georgewbush-whitehouse.archives.gov/omb/legislative/sap/110-1/hr2669sap-r.pdf.

42. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY: S. 1762—HIGHER EDUCATION ACCESS OF 2007 (2007), https://georgewbush-whitehouse.archives.gov/omb/legislative/sap/110-1/s1762sap-s.pdf.

43. Doug Lederman, *Democrats Set Education Budget Compromise*, INSIDE HIGHER EDUC. (Sept. 6, 2007), https://www.insidehighered.com/news/2007/09/06/democrats-set-education-budget-compromise.

congressional leaders agreed on a reconciled CCRAA that effectively split the difference between the House and Senate versions.[44] The compromise increased the maximum Pell Grant amount, slashed subsidies to lenders, and directed those savings toward programs designed to increase the accessibility of higher education.[45]

Though it lacked bipartisan input, the reconciled CCRAA received lukewarm approval from some GOP leaders. Education Secretary Margaret Spellings recommended that President Bush sign the bill because it answered his "call to significantly increase" Pell Grant funding.[46] While other Republicans derided the CCRAA as a "form of socialism" that would "cripple the private sector loan" industry, [47] the reconciled bill sailed comfortably through Congress, clearing both chambers on September 7, 2007.[48] Twenty days later, President Bush signed the CCRAA into law, noting that the legislation "takes important steps to put higher education within reach for more of the men and women who wear our Nation's uniform."[49]

Section 401 of the CCRAA, titled "Loan Forgiveness for Public Service Employees", created PSLF. The section amended Title 20, Section 1087e of the United States Code to require the Education Secretary to:

> cancel the balance . . . 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 . . . (i) payments under an income-based repayment plan . . . (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 . . . .[50]

PSLF was designed to increase the appeal of public service by offering financial stability for an expensive prerequisite: higher education. Concurrently, the program would incentivize graduates to seek positions with public sector employers, which paid relatively less than private sector counterparts and thus faced employment shortages.[51]

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44. *Id.*

45. Diana Jean Schemo, *Congress Approves Student Loan Bill*, N.Y. TIMES (Sept. 7, 2007), https://www.nytimes.com/2007/09/07/education/07cnd-loans.html.

46. *Id.*

47. *Id.*

48. *See supra* notes 3–4 and accompanying text.

49. Remarks on Signing the College Cost Reduction and Access Act, 2 PUB. PAPERS 1244, 1244 (Sept. 27, 2007).

50. College Cost Reduction and Access Act of 2007, Pub. L. No. 110-84, § 401, 121 Stat. 784, 800 (2007).

51. In his concluding remarks on the CCRAA, Senator Kennedy stated:

[I]t is the desire of so many of these young people to be involved in public service and to help respond to the needs in their communities. . . . So often, because of their indebtedness, they have to choose careers in order to deal with the indebtedness. . . . We are giving them a pathway to making a difference in terms of the future of our country . . . .

153 CONG. REC. S11,254, S11,258 (daily ed. Sept. 7, 2007) (statement of Sen. Ted Kennedy).

After the CCRAA received President Bush's signature, the USED initiated the rulemaking process. On July 1, 2008, the USED issued a Notice of Proposed Rulemaking seeking comments on PSLF's implementation.[52] Commenters "overwhelmingly supported the program," believing it would "be an important tool for attracting graduates and retaining talented employees in critical jobs that support our society's well-being."[53] The USED's final regulations generally mirrored the requirements under section 401 of the CCRAA. To receive tax-exempt forgiveness on their remaining loan balance, a borrower must (1) be employed full-time by a qualifying public service employer, (2) have a federal Direct Loan that is paid using income-driven[54] repayments, (3) make 120 on-time monthly payments on that Direct Loan while working for a public service employer, and (4) submit a form to the USED attesting to meet these requirements.[55]

While these key requirements flowed directly from statutory language, the retroactive application aspect of PSLF's administration comes from the USED's rulemaking. Section 685.219(e) of the program's implementing regulations allows a borrower to request loan forgiveness only "[a]fter making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested."[56] This regulation places significant risk on a borrower: instead of first registering for the program and having initial qualifications checked, she must accrue ten years of service and payments and *then* apply for forgiveness, hoping that all her actions fulfilled the program's requirements.[57] As discussed later, this retroactive framework has created major problems for current PSLF applicants.

Overall, the USED's rulemaking was implemented with little fanfare, perhaps because PSLF's benefits would not be realized for about a decade. However, that temporal limitation did not prevent President Barack Obama,

52. Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 73 Fed. Reg. 37,694, 37,704–09 (July 1, 2008) (to be codified at 34 C.F.R. pts. 674, 682, 685).

53. Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 73 Fed. Reg. 63,232, 62,343 (Oct. 23, 2008) (to be codified at 34 C.F.R. pts. 674, 682, 685).

54. While both the CCRAA's text and PSLF's finalized regulations contain a provision that allows a "standard repayment plan" to qualify for forgiveness, its internal references specify that forgiveness under this provision is limited to standard repayment plans that have ten-year terms. Such a provision is functionally useless for the purposes of attaining PSLF relief, as a borrower would have completely paid off their debt during the ten-year term and thus would need no forgiveness. See internal statutory references within 20 U.S.C. § 1087e(m)(1)(A)(ii) (CCRAA's text) and 34 C.F.R. § 685.219(c)(1)(iv)(C) (the USED's implementing regulations).

55. Public Service Loan Forgiveness Program, 34 C.F.R. § 685.219 (2008).

56. *Id.* § 685.219(e)(1).

57. Ideally, a borrower is incredibly prudent and checks their program qualifications before committing to PSLF-related employment. However, most federal loans are managed by a servicer, which may mislead borrowers. *See* discussion *infra* Part II.A.2.

who followed President Bush in the White House, from implementing significant changes to improve the program's accessibility.

B. REFINEMENT: THE OBAMA ADMINISTRATION IMPROVES PROGRAM ACCESS

President Obama's inauguration, in January 2009, shuffled student debt improvements to the top of the West Wing's policy agenda. Even though PSLF relief would not be distributed during its tenure,[58] the Obama Administration worked to make the program more accessible to borrowers and mitigate potential problems.

The first of these improvements came in 2010, when the USED announced its discontinuation of the Federal Family Education Loan (FFEL) Program. FFELs are student loans funded by private lenders;[59] the federal government guaranteed these loans and fixed their interest rates.[60] President Obama characterized FFELs as taxpayers "paying banks a premium to act as middlemen, a premium that costs the American people billions of dollars each year."[61] Despite opposition from congressional Republicans,[62] the administration attached the FFEL Program's defunding as a rider bill to the Health Care and Education Reconciliation Act.[63] Beginning in July 2010, the USED stopped issuing FFELs to new borrowers.[64]

Removing FFELs from the student loan market tremendously benefitted borrowers seeking PSLF relief. Crucially, FFELs are distinct from Direct Loans, and thus are ineligible for forgiveness. President Obama declared that ending the FFEL Program would shift borrowers "entirely over to Direct Loans"[65]—the only federal loan that qualified for PSLF at the time.[66] By

58. This is because President Obama was, at latest, termed out in January 2017, and PSLF relief would be distributed at earliest in October 2017 (120 months, or 10 years, after the program's service period began). *See* U.S. CONST. amend. XXII, § 1 (limiting a President to two elected terms of office); 34 C.F.R. § 685.219(c)(1)(iii) (requiring 120 separate monthly payments after October 1, 2007).

59. Though the USED no longer issues new FFELs, the loans still exist for borrowers who held the loans prior to their discontinuation. *See* Kevin Payne, *FFEL Loan Forgiveness and Repayment: What You Should Know*, STUDENT LOAN PLANNER, https://www.studentloanplanner.com/ffel-loan-forgiveness-repayment-get-rid-loans/ (Dec. 11, 2020).

60. *Id.*

61. Remarks on Education Reform, 1 PUB. PAPERS 550, 552 (Apr. 24, 2009).

62. Thomas Ferraro, *Congress Approves Obama's Overhaul of Student Loans*, REUTERS (Mar. 25, 2010, 5:25 PM), https://www.reuters.com/article/usa-studentloans/congress-approves-obamas-overhaul-of-student-loans-idUSN2418677420100326.

63. Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 2201, 124 Stat. 1029, 1074 (2010).

64. *See Subsidized and Unsubsidized Loans*, FED. STUDENT AID, https://studentaid.gov/understand-aid/types/loans/subsidized-unsubsidized (last visited Feb. 25, 2021) ("As a result of legislation that took effect July 1, 2010, no further loans are being made under the FFEL Program."). It is worth noting that this legislation only barred the issuance of *new* FFEL Program loans; borrowers who had FFELs remained on those loans. *See* Payne, *supra* note 59.

65. 1 PUB. PAPERS 550, 552 (Apr. 24, 2009).

66. 20 U.S.C. § 1087e(m)(1)(A).

removing a popular loan option which rendered borrowers ineligible for forgiveness, and filling the gap with qualifying loans, the Obama Administration positioned future applicants to have a higher likelihood of meeting PSLF's requirements.

After discontinuing the FFEL Program for future borrowers, the Obama Administration worked to encourage borrowers who remained on FFELs to reconsolidate into a Direct Loan.[67] Between January and July 2012, the USED offered Special Direct Consolidation Loans (SDCLs),[68] and required servicers to inform eligible borrowers of the promotion.[69] SDCLs allowed borrowers holding both a FFEL and a USED-owned loan to consolidate into a single Direct Loan, and reduced the interest rate on the consolidated loan by 0.25%.[70] In effect, borrowers who used a SDCL received both a lowered interest rate and a PSLF-qualifying federal loan.[71] Despite only being offered for six months, the SDCL program distributed about $600 million in savings[72] and directed many borrowers onto a path toward PSLF relief.

The Obama Administration also created additional income-driven repayment plans for borrowers. Before 2011, there were only two income-driven repayment plans for Direct Loans: Income-Contingent Repayment (ICR) and Income-Based Repayment (IBR).[73] ICR, which is available to all borrowers, fixes monthly payments at the lesser of: (a) 20% of an individual's discretionary income; or (b) a fixed amount for a twelve-year repayment

67. Press Release, White House, We Can't Wait: Obama Administration to Lower Student Loan Payments for Millions of Borrowers (Oct. 25, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/10/25/we-cant-wait-obama-administration-lower-student-loan-payments-millions-b; *see also* Stephen Burd, *President Obama Uses Executive Order to Make an Important Fix to Direct Lending*, NEW AM. (Oct. 26, 2011), https://www.newamerica.org/education-policy/higher-education/higher-ed-watch/president-obama-uses-executive-order-to-make-an-important-fix-to-direct-lending/.

68. *Special Direct Consolidation Loans*, FED. STUDENT AID (Jan. 9, 2012), http://web.archive.org/web/20120113072420/http:/studentaid.ed.gov/PORTALSWebApp/students/english/specialconsolidation.jsp.

69. *Special Direct Consolidation Loan Information—Short-Term Consolidation Opportunity Offered from January–June 30, 2012*, FED. STUDENT AID (Oct. 26, 2011), http://web.archive.org/web/20120110070017/http://www.ifap.ed.gov/eannouncements/102611SpecialDCLInfoInitial.html.

70. *Id.*

71. *Id.*

72. FED. STUDENT AID, U.S. DEP'T OF EDUC., ANNUAL REPORT 2013, at 9 (2013), https://studentaid.gov/sites/default/files/FY2013FederalStudentAidAnnualReport.pdf ("The initiative disbursed approximately $0.6 billion in FY 2013.").

73. *See* FED. STUDENT AID, U.S. DEP'T OF EDUC., PUBLIC SERVICE LOAN FORGIVENESS PROGRAM: QUESTIONS AND ANSWERS (Q&AS) 3 (2010), https://financialaid.tamu.edu/Forms/IRBPublicLoanForgiveness.aspx (question 13). Note that while the answer lists the "Standard Repayment Plan[] with a 10 year repayment period" as a qualifying loan, such a plan is functionally useless, as a loan completely repaid within ten years has no balance to forgive. *See id.* For a greater discussion, see *supra* note 54.

plan.[74] IBR, which is limited to borrowers with demonstrated financial need, caps payments at 10 to 15% of discretionary income.[75]

In 2011, the USED created a third income-driven repayment plan: Pay As You Earn (PAYE).[76] PAYE was available for those who received a Direct Loan after 2011 and met an income threshold; it capped loan payments at 10% of discretionary income.[77] PAYE also capped capitalized interest at 10% of the loan's overall balance.[78] The Obama Administration characterized PAYE as an affordable alternative to IBR and ICR, and estimated that about 1.6 million borrowers qualified for reduced payments under the plan.[79]

Four years after PAYE's implementation, the USED finalized regulations for another income-driven repayment program: Revised Pay As You Earn (REPAYE).[80] REPAYE was available to all Direct Loan holders, and capped payments at 10% of a borrower's discretionary income.[81] Though it had drawbacks for certain borrowers,[82] REPAYE expanded PAYE's stellar benefits to all borrowers with federal loans.

These initiatives—replacing FFELs with Direct Loans, incentivizing consolidation through SDCLs, and creating PAYE and REPAYE—made PSLF's component parts more accessible and palatable to borrowers. By expanding opportunities for borrowers to receive Direct Loans and income-driven repayment plans, the Obama Administration helped set future PSLF applicants up for later success. Meanwhile, as President Obama's second term came to an end, a milestone approached: the first year that borrowers could apply for forgiveness.

74. Philip G. Schrag, *The Federal Income-Contingent Repayment Option for Law Student Loans*, 29 HOFSTRA L. REV. 733, 770–71, 771 n.193 (2001).

75. Kevin J. Smith, *The Income-Based Repayment Plans and For-Profit Education: How Does This Combination Affect the Question to Include Student Loans in Bankruptcy?*, 32 GA. ST. L. REV. 603, 612–14 (2016).

76. Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 77 Fed. Reg. 66,088, 66,088 (Nov. 1, 2012) (to be codified at 34 C.F.R. pts. 674, 682, 685).

77. *Id.* at 66,116–17.

78. *Id.* at 66,141 ("After the outstanding principal amount is 10 percent greater than the original amount, interest continues to accrue but is not capitalized.").

79. *Education Department Launches 'Pay As You Earn' Student Loan Repayment Plan*, U.S. DEP'T OF EDUC. (Dec. 21, 2012), https://www.ed.gov/news/press-releases/education-department-launches-pay-you-earn-student-loan-repayment-plan.

80. Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 80 Fed. Reg. 67,204, 67,204 (Oct. 30, 2015) (to be codified at 34 C.F.R. pts. 668, 682, 685).

81. *Your Federal Student Loans Just Got Easier to REPAYE*, FED. STUDENT AID: HOMEROOM (Dec. 17, 2015), https://blog.ed.gov/2015/12/your-federal-student-loans-just-got-easier-to-repaye/.

82. For example, married couples are disadvantaged under REPAYE, as the program combines both the borrower's income *and* her spouse's income to determine discretionary income (and derivative payments). *Id.*

C. RELUCTANCE & FAILURE: THE TRUMP ADMINISTRATION INHERITS PSLF

America underwent another political transition in 2016, electing Donald Trump to succeed President Obama. This change shifted priorities in the West Wing surrounding student loan forgiveness. The Trump Administration's USED, led by Secretary of Education Betsy DeVos, showed little sympathy for the qualms of student loan borrowers.[83] The conflict between this philosophy and PSLF's ideological promise foreshadowed danger for the program just as the first wave of forgiveness applications loomed.

The USED worked to stymie PSLF's administration even before it began accepting applications for forgiveness. In August 2017, the USED terminated memoranda of understanding (MOUs) it had established with the Consumer Financial Protection Bureau (CFPB) during the Obama Administration.[84] These MOUs, designed to assist "borrowers seeking to resolve" student loan complaints, streamlined information sharing and collaborative investigations between the two agencies.[85] In explaining its action, the USED accused the CFPB of overstepping its authority.[86] Yet consumer advocates decried the move as "short-sighted and counterproductive"[87] for protecting borrowers' rights.

The USED began processing the first wave of PSLF applications under this specter, and the initial results were astounding. Of the 28,081 borrowers who had applications processed, just 96 received relief—a rejection rate of about 99.66%.[88] This rate has hardly improved: at the end of 2018, the USED

83. *See* Jordan Weissmann, *Betsy DeVos Is Wasting No Time Screwing Over Students Who Borrow Money for College*, SLATE (Apr. 18, 2017, 4:58 PM), https://slate.com/business/2017/04/betsy-devos-is-wasting-no-time-screwing-over-student-borrowers.html.

84. Letter from Kathleen Smith, Acting Assistant Sec'y, Off. Of Postsecondary Educ., U.S. Dep't of Educ., and A. Wayne Johnson, Chief Operating Officer, Fed. Student Aid, U.S. Dep't of Educ., to Richard Cordray, Dir., Consumer Fin. Prot. Bureau (Aug. 31, 2017), https://consumerist.com/consumermediallc.files.wordpress.com/2017/09/2017-09-01_signed_letter_to_cfpb.pdf; *see also* Anya Kamenetz, *The Department of Education Cuts Off a Student Loan Watchdog*, NPR:ED (Sept. 20, 2017, 6:18 AM), https://www.npr.org/sections/ed/2017/09/20/551857172/the-department-of-education-cuts-off-a-student-loan-watchdog.

85. Memorandum of Understanding Between the Bureau of Consumer Fin. Prot. And the U.S. Dep't of Educ. Concerning the Sharing of Info. (Oct. 19, 2011) (on file with *Hastings Law Journal*); Memorandum of Understanding Concerning Supervisory and Oversight Coop. and Related Info. Sharing Between the U.S. Dep't of Educ. And the Consumer Fin. Prot. Bureau (Jan. 9, 2014) (on file with *Hastings Law Journal*).

86. Letter from Kathleen Smith and A. Wayne Jackson to Richard Cordray, *supra* note 84.

87. Ashlee Kieler, *Betsy DeVos Refuses to Work with Consumer Protection Agency on Student Loans*, CONSUMER REPS. (Sept. 5, 2017), https://www.consumerreports.org/consumerist/betsy-devos-refuses-to-work-with-consumer-protection-agency-on-student-loans/.

88. *Public Service Loan Forgiveness Data,* FED. STUDENT AID, https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data [hereinafter *PSLF Pre-March 2019 Data Report*] (click "Pre-March 2019 PSLF Report" hyperlink to download) (using the figures from the first report labeled "As of 6/30/2018"); *see also* Jillian Berman, *This Government Loan Forgiveness Program Has Rejected 99% of Borrowers So Far*, MARKETWATCH (Sept. 23, 2018, 8:55 AM), https://www.marketwatch.com/story/this-government-loan-forgiveness-program-has-rejected-99-of-borrowers-so-far-2018-09-20.

had approved relief for 338 out of 53,749 borrowers (a 99.37% rejection rate[89]). As of November 2020, the figure remained well over 98%.[90]

Fingers immediately pointed to the Trump Administration as the architect of the program's disastrous rejection rate. Shortly after PSLF's first results were released, the *Chicago Sun Times*' Editorial Board published a scathing critique:

> We have little doubt that the usual bureaucracy is part of the problem. But also we suspect something worse at work: The Trump administration and DeVos just don't give a damn. They've already said they want to kill the program, whining that it's just "too complicated." So why try to make it work? An administration that cared about working people would cut through the bureaucracy and inefficiency and get that loan forgiveness to those whom the program is designed to assist.[91]

The editorial encapsulates a core question underlying this Note: who is to blame for PSLF's failure? Are problems rooted in the program's bureaucratic requirements? Did the Trump Administration sabotage PSLF? Could a sympathetic administration have avoided this result?

While the Trump Administration frustrated PSLF's development, the program also holds problems rooted in its statute and implementing regulations. PSLF's fixed requirements made it difficult for borrowers to meet qualifying criteria at the time of the program's creation. Mischievous loan servicers, tasked with enforcing the program's components, further hampered this dilemma by deterring borrowers from working toward forgiveness. Correctly diagnosing the actions and failures that created these problems is essential to designing comprehensive policy that improves the program.

II. PINPOINTING FAILURES

The reasons why many borrowers—over 223,000 as of November 2020[92]—are denied loan forgiveness provide a useful starting point to understanding PSLF's disastrous rejection rate. According to the USED's most recent report, many applications were rejected for not having a sufficient number of qualifying payments (59% of rejections[93]). Others had missing information on their applications (26%[94]), held ineligible loans (11%[95]), or

89. *PSLF Pre-March 2019 Data Report*, *supra* note 88 (using the figures from the third report labeled "As of 12/31/2018").

90. *See* discussion *supra* note 9.

91. Editorial, *Billionaire Betsy and Her Abandonment of Student Loan Relief for Teachers, Others*, CHI. SUN TIMES (Sept. 9, 2019, 6:32 PM), https://chicago.suntimes.com/2019/9/9/20857278/student-loan-debt-betsy-devos-public-service-loan-forgiveness-trump-administration.

92. *See November 2020 PSLF Data Report*, *supra* note 8 (subtracting row 12 from row 8).

93. *See id.* (row 14).

94. *Id.*

95. *Id.*

lacked enough public service time or worked for non-qualifying employers (combined 4%[96]).

Table 2: Common Reasons for Ineligible PSLF Applications (November 2020)[97]

Reason for Denied Application	% of Denied Applications	# of Denied Applications[98]
Qualifying Payments	59%	~155,240
Missing Information	26%	~68,411
No Eligible Loans	11%	~28,943
Employment Dates Not Qualified	combined ~4%[99]	~10,525

These statistics support two explanations for why PSLF is rejecting an astronomical percentage of applicants: (1) that the PSLF program's statutory and regulatory design is problematic, and (2) the Trump Administration refused to faithfully administer the program. However, these explanations are not mutually exclusive, and understanding all of the program's problems is essential to designing comprehensive policy that corrects its failures.

A. Disastrous Design: Congress & the Education Department's Slipshod Statute and Regulations

A notable feature of PSLF is the specificity of its requirements. The program's statute and implementing regulations set clear qualifications for forgiveness: 120 on-time monthly payments, made on a federal Direct Loan, using an income-driven repayment plan, while also working full-time in a qualifying public service position.[100] These requirements restrict the USED's discretion to apply lenient standards when evaluating applications.

Public policy generally benefits from precise specifications, but the advantages of specificity disappear if requirements are too difficult to

96. In previous PSLF data reports, the USED included "Employer Dates Not Qualified" and "Employer Not Eligible" as distinct categories among its reasons for denied applications. *See, e.g.*, *Public Service Loan Forgiveness Data*, FED. STUDENT AID, https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data (last visited Feb. 25, 2021) (click "September 2019 PSLF Report" hyperlink to download) (row 14). In the September 2019 PSLF Report, each of these two categories composed 2% apiece of the total denied applications. *Id.* The USED has not explained the removal of these categories; the Author assumes that these categories still remain but are no longer reported.

97. *See November 2020 PSLF Data Report*, *supra* note 8 (row 14). These statistics are calculated using percentages that pertain to rejected applications, not applicants. The USED does not provide percentages for reasons for denial in terms of applicants.

98. The USED only provides whole-number percentages when categorizing denied applications. *See, e.g.*, *id.* A rough approximation can be formed by multiplying the percentage and the total number of denied applications (263,118), see *id.* (row 13). Application figures are rounded to the nearest whole number.

99. *See* discussion *supra* note 96.

100. 20 U.S.C. § 1087e(m)(1)(A).

achieve.[101] This duality undermined the first wave of PSLF applicants. Borrowers currently applying for relief began working toward forgiveness ten years ago, when many of PSLF's component requirements were vastly underdeveloped. While Congress and the USED created PSLF in hopes of incentivizing public service, the program's statute and implementing regulations appeared oblivious[102] to the realities of the federal student loan system at the time. The following Subparts illustrate the numerous blunders embedded within PSLF's statutory and regulatory design.

1. Requiring Direct Loans and Income-Driven Repayment Plans

Congress and the USED's first blunder came in requiring Direct Loans and income-driven repayment plans for forgiveness. In October 2007, the first month when payments could be credited toward PSLF, Direct Loans and income-driven repayment plans were underdeveloped components of the federal student loan market.[103] As a result, borrowers had a strong likelihood of holding loans that, absent reconsolidation, disqualified them from obtaining forgiveness.

Consider the example of Direct Loans. In 2007, the USED distributed Direct Loans to about seven million recipients—under 25% of the nation's 28.3 million federal loan borrowers.[104] In comparison, roughly 89.75% of federal borrowers held a non-qualifying Perkins Loan and/or a FFEL.[105] Consequently, at the time of PSLF's creation, about nine out of every ten borrowers were ineligible for relief on their entire[106] federal student loan balance.

A similar story arose for income-driven repayment plans. Federal loans generally have three kinds of repayment plans: level (also known as standard), graduated, and income-driven.[107] Level plans have a fixed monthly payment throughout the term, graduated plans have a low monthly payment that increases over the term, and income-driven plans have a monthly payment

101. Generally speaking, program specifications are good because they allow policymakers to direct support to a limited and targeted group. However, if those specifications are difficult to achieve, the overall use, and therefore effectiveness, of the program diminishes.

102. An alternative explanation for PSLF's restrictive statutory framework is that congressional Democrats knew that a bigger proposal (such as making all federal loans eligible for forgiveness) would be incredibly costly and thus unacceptable to Republican lawmakers. Regardless of the reason, Congress and the USED produced a statutory and regulatory framework that was insufficient and ineffective for student loan borrowers.

103. See *infra* Tables 3 and 4 for Federal Loan Portfolio statistics.

104. See *infra* Table 3 for 2007 Federal Loan Portfolio statistics.

105. *Id.*

106. A caveat: there are borrowers who have a combination of qualifying loans and non-qualifying loans. Individuals therefore could receive relief on their PSLF-qualifying loans, but still not have their entire loan balance forgiven.

107. *Repayment Plans*, FED. STUDENT AID, https://studentaid.gov/manage-loans/repayment/plans (last visited Feb. 25, 2021).

calculated using the borrower's annual income.[108] PSLF requires that qualifying payments be made on an income-driven repayment plan. Yet as of 2013,[109] *six years* after payments and service time began qualifying for PSLF, only 47.34% of federal student loans were paid via an income-driven repayment plan.[110]

Table 3: Distribution and Percentages of Direct Loans and Non-PSLF Qualifying Loans Among Federal Student Loan Borrowers, 2007 to 2020[111]

FY	Direct Loans		Non-Qualifying Loans (Perkins, FFEL)	
	# of borrowers	% of federal borrowers	# of borrowers	% of federal borrowers
2007	7.0 mil.	24.73%	25.4 mil.	89.75%
2008	7.7 mil.	25.75%	26.6 mil.	88.96%
2009	9.2 mil.	28.66%	28.0 mil.	87.23%
2010	14.4 mil.	41.98%	28.0 mil.	81.63%
2011	19.4 mil.	53.15%	26.7 mil.	73.15%
2012	22.8 mil.	59.53%	25.3 mil.	66.06%
2013	25.6 mil.	64.65%	23.8 mil.	60.10%
2014	27.9 mil.	68.55%	22.3 mil.	54.79%
2015	29.9 mil.	71.88%	20.7 mil.	49.76%
2016	31.5 mil.	74.47%	19.1 mil.	45.15%
2017	33.0 mil.	77.46%	17.4 mil.	40.85%
2018	34.2 mil.	79.72%	15.8 mil.	36.83%
2019	35.1 mil.	81.82%	14.1 mil.	32.87%
2020	35.9 mil.	83.68%	12.7 mil.	29.60%

108. *Id.*
109. The USED has not provided any pre-2013 statistics on the distribution of repayment plans.
110. See *infra* Table 3 for 2013 Direct Loan repayment plan statistics.
111. *Federal Student Aid Portfolio Summary*, FED. STUDENT AID, https://studentaid.gov/data-center/student/portfolio (last visited Feb. 25, 2021) (click "Federal Student Aid Portfolio Summary" hyperlink to downloaded). The figures used in this citation are either the individual years themselves, or, if quarterly-distributions are provided for a year, the final quarter (Q4) of that year.

Table 4: Distribution and Percentages of Level, Graduated, and Income-Driven Repayment Plans Among Federal Student Loan Borrowers, 2013 to 2020[112]

FY	Level, >10 Year Plan	**Graduated, >10 Year Plan**	**Income-Driven Repayment Plans (IBR, ICR, PAYE, REPAYE)**	% of Loans Not PSLF Eligible (Level/ Graduated)	**% of Loans PSLF Eligible**
2013	1.58 mil.	0.30 mil.	1.69 mil.	52.66%	47.34%
2014	1.61 mil.	0.27 mil.	2.77 mil.	40.43%	59.57%
2015	1.64 mil.	0.27 mil.	4.21 mil.	31.21%	68.79%
2016	1.65 mil.	0.28 mil.	5.58 mil.	25.70%	74.30%
2017	1.70 mil.	0.30 mil.	6.49 mil.	23.56%	76.44%
2018	1.69 mil.	0.32 mil.	7.21 mil.	21.80%	78.20%
2019	1.70 mil.	0.34 mil.	7.77 mil.	20.80%	79.20%
2020	1.73 mil.	0.35 mil.	8.23 mil.	20.17%	79.83%

Tables 3 and 4 illustrate the annual proportion of PSLF-qualifying loans as a part of the entire market of federal student loan products. Table 3, which segments federal loan borrowers into holders of Direct Loans and non-Direct Loans, shows that as of 2011 (the latest time one could begin payments to apply for forgiveness today), 73.15% of federal loan holders held a non-Direct Loan, disqualifying them from receiving complete forgiveness.[113]

Table 4, which segments Direct Loan holders into income-driven repayment plans and non-qualifying repayment plans, paints a similar picture. As of 2013, 52.66% of Direct Loan holders were on non-income-driven repayment plans, which are ineligible for PSLF relief.[114] While the USED has not released pre-2013 data, borrowers who took out federal loans before 2011 only had two (arguably inferior[115]) income-driven repayment plans available for use. Put simply, applicants who currently file for forgiveness likely hold a federal loan that is ineligible for relief.

112. *Federal Student Aid Portfolio Summary*, FED. STUDENT AID, https://studentaid.gov/data-center/student/portfolio (last visited Feb. 25, 2021) (click "Portfolio by Repayment Plan (DL, ED-Held FFEL, ED-Owned)" hyperlink to download). The figures used in this citation are those of the final quarter (Q4) of that year. For simplicity, all qualifying income-driven plans are aggregated in this table.

113. *See* "FY 2010" row *supra* Table 3.

114. *See* "FY 2013" row *supra* Table 4.

115. For PSLF purposes, most borrowers are best off choosing PAYE if they qualify; if not, REPAYE, IBR, and ICR (in that order) are generally recommended for having an income-driven repayment plan. *See Which Is the Best Income-Driven Repayment Plan?*, CAPPEX, https://www.cappex.com/articles/money/best-income-driven-repayment-plan (last visited Feb. 25, 2021).

Borrowers with loan plans other than a Direct Loan with an income-driven repayment plan typically receive a PSLF denial that is categorized as not having an "eligible loan."[116] As of November 2020, this group comprised 11% of rejections (about 28,900 applications).[117] In future years, applicants seeking forgiveness are more likely to have Direct Loans and income-driven repayment plans because of the Obama Administration's work to expand access to both requirements.

Borrowers who only fail to meet the income-driven repayment requirement may still receive relief. In response to PSLF's high rejection rate, Congress created Temporary Expanded Public Service Loan Forgiveness (TEPSLF).[118] TEPSLF extended forgiveness to borrowers who were denied relief under PSLF solely for failing to make income-driven repayments, provided that the final payment made on the Direct Loan and the payment made exactly one year before that one equaled the amounts the borrower would have paid on an income-driven payment plan.[119] However, the limited data available for TEPSLF still remains concerning. A Government Accountability Office (GAO) report, published in 2019, found that out of 54,184 TEPSLF applicants, 53,523 were turned away—a rejection rate of 98.78%.[120]

One explanation for TEPSLF's rate is a procedural prerequisite: the program automatically denies forgiveness for borrowers who lack a PSLF rejection.[121] However, even after removing those 38,068 applications,[122] TEPSLF still only approved 661 out of 16,116 borrowers—a rejection rate of 95.89%. The GAO Report provides reasons for the 15,455 denials: 5589 (36.16%) had not been repaying loans for ten years; 3078 (19.92%) failed to meet the final payment minimums; and the rest were categorized as: not enough qualifying payments, no qualifying federal loans, less than ten years of work for a qualifying employer, or other categories.[123]

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116. The USED defines this category as: "The borrower has requested forgiveness but the borrower does not have Direct Loans that are eligible to participate in the PSLF program. Typically, these borrowers have FFEL, Perkins or private/non-federal loans." *November 2020 PSLF Data Report*, *supra* note 8 (row 11 of the "Definitions" tab).

117. *See supra* Table 2. It is worth noting that this figure does not include "*de facto* rejections"—individuals who took out loans, went into public sector positions, and made on-time payments, only to later not apply for forgiveness because they realized their loans were not eligible for PSLF. The number of individuals in this category may be large, but there is no sufficient way of determining that figure.

118. Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, § 315, 132 Stat. 348, 752 (2018).

119. *Id.*

120. U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-595, PUBLIC SERVICE LOAN FORGIVENESS: IMPROVING THE TEMPORARY EXPANDED PROCESS COULD HELP REDUCE BORROWER CONFUSION 12 fig.2 (2019), https://www.gao.gov/assets/710/701157.pdf.

121. *See* Press Release, U.S. Dep't of Educ., U.S. Department of Education Announces Opportunity for Federal Student Loan Borrowers to Be Reconsidered for Public Service Loan Forgiveness (May 23, 2018), https://www.ed.gov/news/press-releases/us-department-education-announces-opportunity-federal-student-loan-borrowers-be-reconsidered-public-service-loan-forgiveness.

122. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 120, at 13 fig.3.

123. *Id.*

Crucially, interested borrowers who discover that they are on a disqualifying plan have limited methods to enter a track to forgiveness. Upon discovering that their loans are ineligible for PSLF, a borrower would likely reconsolidate into a qualifying package. However, reconsolidation resets one's progress toward forgiveness, and a borrower still must make 120 payments on the qualifying plan.[124] Effectively, the later a borrower reconsolidates, the fewer benefits she receives from eventual relief—and that assumes she is willing to make another ten years' worth of payments and service.

PSLF's rigid statutory and regulatory requirements were ill-fitted to the realities of America's student loan industry. While Congress and the USED aspired to create a comprehensive program that incentivized public service for all, their framework required loan components that, at the time, were vastly underdeveloped and uncommon. Combining this difficulty with inflexible regulations effectively destined PSLF and TEPSLF applicants for failure.

2. *Having Servicers Track Payments and Manage Program Access*

Congress and the USED also blundered in having loan servicers administer and track PSLF's requirements.[125] Loan servicers are intermediaries between borrowers and lenders: they collect loan payments, assist during periods of deferment or forbearance, and assess eligibility for forgiveness programs.[126] PSLF forces borrowers to interact with their servicers in two ways. First, because PSLF requires income-driven repayment plans, a borrower must annually recertify her updated income to the loan servicer.[127] Second, if a borrower wishes to consolidate toward PSLF-qualifying loans or track her current progress, she must contact her servicer to execute those actions. These interactions create unique problems for borrowers.

Before describing the numerous servicer problems that PSLF-seeking borrowers have encountered, it is important to outline the role that servicers play in administering the program. When a borrower obtains a federal loan, she

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124. This is because all prior payments made were on ineligible PSLF plans; the USED does not credit ineligible payments towards forgiveness.

125. To be clear, Congress and the USED did not explicitly delegate the responsibility of tracking a borrower's PSLF qualifications to student loan servicers; both PSLF's statutory text and implementing regulations do not contain the term "servicer." However, the federal student loan program is entirely administered through loan servicers. *Who's My Student Loan Serviceer?*, FED. STUDENT AID, https://studentaid.gov/manage-loans/repayment/servicers (last visited Feb. 25, 2021) ("A loan servicer is a company that [the USED] assign[s] to handle the billing and other services on your federal student loan on [the USED's] behalf . . . ."). Congress and the USED could have avoided this problem through a variety of different measures, including creating an office within the Education Department to assist with administering PSLF relief.

126. John Egan, *What Is a Student Loan Servicer?*, U.S. NEWS & WORLD REP.: LOANS (Jan. 4, 2019, 9:00 AM), https://loans.usnews.com/what-is-a-student-loan-servicer.

127. *See What Is Income-Driven Repayment?*, FED. STUDENT AID, https://studentaid.gov/app/ibrInstructions.action (last visited Feb. 25, 2021) (informing borrowers that under an income-driven plan, they "will be required to come back and recertify [their] income information each year").

is assigned one of the USED's many loan servicers.[128] The servicer serves as the primary point-of-contact for the borrower. However, when a borrower formally declares an intent[129] to pursue PSLF, the loan is shifted to the only servicer that processes PSLF loans: FedLoan Servicing (FedLoan).[130]

This USED-designed framework creates an odd dilemma for all student loan servicers besides FedLoan. At any point *before* a borrower declares her intent to pursue forgiveness, a servicer must continue to assist the borrower, including with any PSLF-related inquiries. However, as soon as a borrower officially announces this intent, the servicer must transfer the loan to FedLoan. Thus, servicers are financially motivated to turn borrowers away from PSLF: once a borrower decides to pursue forgiveness, a servicer loses a customer and any further interest revenue to FedLoan.[131] Yet paradoxically, Congress and the USED positioned servicers perfectly to discourage PSLF's use. Servicers employ a variety of strategies to turn borrowers away from forgiveness. A sampling of anecdotes, publicized through media reports and litigation, are provided to illustrate these tactics.

First, servicers can discourage borrowers from considering PSLF by providing inaccurate program information. In 2011, after hearing about PSLF, a first-grade teacher from Maryland asked her servicer about reconsolidation.[132] The servicer's customer service representative (CSR) informed her that all 120 payments needed to be consecutive and on-time, and just one missed payment would derail her eligibility.[133] Of course, that

128. *See* Egan, *supra* note 126.

129. Prior to submitting an application for forgiveness, a borrower may formally declare her intent to pursue PSLF by submitting a PSLF Employment Certification Form (ECF) to the USED. Section 2 of the ECF requires a borrower to certify that "[b]y submitting this form, [the borrower's] student loan(s) held by the Department may be transferred to FedLoan Servicing." FED. STUDENT AID, PUBLIC SERVICE LOAN FORGIVENESS (PSLF) & TEMPORARY EXPANDED PSLF (TEPSLF) EMPLOYMENT CERTIFICATION & APPLICATION § 2, cl. 4, https://studentaid.gov/sites/default/files/public-service-employment-certification-form.pdf (last visited Feb. 25, 2021).

130. Anna Helhoski, *FedLoan Servicing Customer Service: What It Can Do and How to Contact*, NERDWALLET (Oct. 21, 2020), https://www.nerdwallet.com/article/loans/student-loans/fedloan-servicing-student-loans#:~:text=FedLoan%20is%20the%20only%20federal,working%20for%20an%20eligible%20 employer.

131. The Student Borrower Protection Center writes that:

> [Servicers] have a financial disincentive that discourages these companies from providing adequate and actionable information to borrowers trying [to] get on track for PSLF. Specifically, once a borrower is advised of her right to pursue PSLF and takes action to get on track, the borrower would have to immediately consolidate her loan—costing the lender future interest revenue and costing the loan servicer a customer.

STUDENT BORROWER PROT. CTR. & AM. FED. OF TEACHERS, KEEPING THE PROMISE OF PUBLIC SERVICE LOAN FORGIVENESS 11 (2018), https://protectborrowers.org/wp-content/uploads/2018/12/SBPC-AFT-PSLF-Investigation.pdf (footnote omitted).

132. Stacy Cowley, *Teachers Sue Navient, Claiming Student Loan Forgiveness Failures*, N.Y. TIMES (Oct. 3, 2018), https://www.nytimes.com/2018/10/03/business/student-loan-forgiveness-lawsuit.html.

133. *Id.*

statement is incorrect,[134] yet the teacher chose to not apply for PSLF because of the misinformation.[135]

Second, servicers may use PSLF's appeal to encourage borrowers to accept various student loan promotions, yet provide packages that are ineligible for forgiveness. FedLoan once advertised a "Consolidation Quiz" which, if a borrower answered that she hoped to lower her monthly payments *and* qualify for PSLF, informed her that "[c]onsolidation could be right for you!"[136] However, lowered monthly payments and PSLF qualification are mutually exclusive: a lowered monthly payment signals the use of a graduated repayment plan, which is ineligible for forgiveness.[137] While the servicer secures future revenue,[138] the borrower believes she is on track for forgiveness—only to discover differently later.

Third, servicers may incorrectly inform ineligible borrowers that they qualify for forgiveness. For example, a Floridian meteorologist was repeatedly told by his servicer that forgiveness was within reach.[139] He then discovered, after ten years of timely payments and public service, that none of his payments counted toward forgiveness because he lacked Direct Loans.[140] If the meteorologist remained interested in obtaining forgiveness, he would have to reconsolidate into a Direct Loan, and then make another ten years' worth of service and payments.

Finally, servicers may require a combination of phone calls and physical forms to reconsolidate loans into PSLF-qualifying packages, turning the reconsolidation process into an arduous ordeal.[141] In contrast, forbearance—an option that would slow one's progress toward forgiveness—is easily applied via a simple phone call.[142]

It is worth mentioning that the aforementioned servicer actions do not unequivocally demonstrate a servicer's intent to mislead borrowers. These problems could be the result of poor CSR training or imposing performance standards. For example, a servicer could encourage CSRs to limit each service call to ten minutes to maximize efficiency. However, even if these problems are attributable to administrative issues, the industry still epitomizes the

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134. Payments for PSLF need not be consecutive, and a late (or missed) payment does not disqualify a borrower from receiving eventual relief. *See Public Service Loan Forgiveness*, FED. STUDENT AID, https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service (last visited Feb. 25, 2021).

135. Cowley, *supra* note 132.

136. Complaint at 55, New York v. Pa. Higher Educ. Assistance Agency, No. 1:19-cv-09155 (S.D.N.Y Oct. 3, 2019).

137. *Id.* at 54–55.

138. *See* STUDENT BORROWER PROT. CTR. & AM. FED. OF TEACHERS, *supra* note 131, at 11.

139. Cowley, *supra* note 132.

140. *Id.*

141. Complaint at 51, *supra* note 136.

142. *Id.*

principal-agent dilemma.[143] Servicers have little incentive to provide borrowers with accurate PSLF information because the servicers stand to lose future interest if the borrower declares her intent to pursue forgiveness.[144] Reconsolidating a borrower's loans toward PSLF qualification requires effort, and the beneficiary of this effort is the borrower, not the servicer. The dilemma also explains why servicers are uninterested in investing in solutions to resolve administrative inefficiencies.

Beyond this first issue, the loan recertification process is also fraught with servicer delays, jeopardizing a borrower's ability to make on-time payments. Recertification is a process where a borrower provides her servicer with current income information.[145] That information is used to calculate an updated income-based payment every year.[146] During recertification, however, a servicer places the borrower in forbearance, a status that prevents additional payments from being made while the income-based payment is updated.[147] This is problematic because recertification can stretch for months, leaving borrowers in limbo.[148] Each month in forbearance delays a borrower's path to forgiveness, as she cannot make timely qualifying payments, nor can she make up missed payments because of PSLF's restriction on lump-sum contributions.[149] For no fault of their own, borrowers are either delayed from qualifying for forgiveness, or worse, believe that they have made sufficient payments during ten years of work, only to have their application rejected.

In the USED's PSLF datasets, borrowers who have payments delayed by recertification lack "qualifying payments."[150] As of November 2020, this group composed 59% of all rejected applications, affecting about 115,000

143. *See* Susan Dynarski, *An Economist's Perspective on Student Loans in the United States* 11 (Econ. Stud. at Brookings Working Paper, 2014), https://www.brookings.edu/wp-content/uploads/2016/06/economist_perspective_student_loans_dynarski.pdf.

144. *See* STUDENT BORROWER PROT. CTR. & AM. FED. OF TEACHERS, *supra* note 131, at 11.

145. *See Income-Driven Repayment Plans*, FED. STUDENT AID, https://studentaid.gov/manage-loans/repayment/plans/income-driven (last visited Feb. 25, 2021).

146. *Id.*

147. *See Federal Student Loan Forbearance Options,* EDVISORS, https://www.edvisors.com/repay-student-loans/federal/suspend/forbearance/?google=amp (last visited Feb. 25, 2021) (noting that administrative forbearance may be applied "while the lender is collecting and processing documentation of a borrower's eligibility for loan forgiveness under the income-based repayment plan").

148. Seth Frotman, *When You Make Student Loan Payments on an Income-Driven Plan, You Might Be in for a Payment Shock*, CONSUMER FIN. PROT. BUREAU (Aug. 17, 2015), https://www.consumerfinance.gov/about-us/blog/when-you-make-student-loan-payments-on-an-income-driven-plan-you-might-be-in-for-a-payment-shock/.

149. *See Public Service Loan Forgiveness (PSLF)*, EDVISORS, https://www.edvisors.com/repay-student-loans/federal/cancel/forgiveness/public-service/ (last visited Feb. 25, 2021) ("Lump-sum payments, even if treated as a prepayment of future payments, do not count.").

150. The USED defines this category as: "The borrower submitted a completed application and was reviewed to determine if the payments made qualify based on the criteria for the program (on-time, in full, on a qualifying repayment plan, while working at a qualifying employer). The results show the borrower has not made 120 qualifying payments." *See November 2020 PSLF Data Report*, *supra* note 8 (row 25 of the "Definitions" tab).

applications.[151] It is unlikely that all borrowers in this category lacked qualifying payments solely because of servicer delays. However, recent litigation suggests that these delays are common. In August 2017, the office of Massachusetts Attorney General Maura Healey sued FedLoan's operators in state court, alleging that the servicer's delays inexcusably slowed borrowers' pursuit of forgiveness.[152]

Similarly, in October 2019, the office of New York Attorney General Letitia James sued FedLoan's operators in federal court, alleging that FedLoan was failing in its servicing of PSLF loans.[153] The numerous allegations detailed FedLoan's inability to accurately count PSLF qualifying payments,[154] delays in processing income certifications,[155] and failure in explaining its determinations when disqualifying certain payments.[156] While litigation remains in preliminary stages, its existence magnifies the USED's error in allowing a single loan servicing agency to service PSLF's component requirements. In doing so, Congress colloquially allowed a loan servicing fox to guard a henhouse of borrowers, and the fox took full advantage.

B. Apathetic Administration: The Trump Administration's Sabotage

While PSLF's requirements are embedded within a rigid statutory framework, the Trump Administration still worked to diminish the program's effectiveness. These actions, from enforcing narrowed definitions of qualifying public service, to obstructing oversight over loan servicers, limited PSLF's accessibility to many public servants.

1. Public Service: An "Arbitrary and Capricious" Interpretation

While many of PSLF's requirements have clear standards, what qualifies as "public service" is rather ambiguous. The program's originating statute defines the term as:

> a full-time job in emergency management, government, military service, public safety, law enforcement, public health, public education (including early childhood education), social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy in low-income communities at a nonprofit organization), public child care, public service for individuals with disabilities, public

151. *See supra* Table 2.

152. Commonwealth v. Pa. Higher Educ. Assistance Agency, No. 1784CV02682-BLS2, 2018 WL 1137520, at *1 (Mass. Super. Ct. Mar. 1, 2018); Complaint at 10, Commonwealth v. Pa. Higher Educ. Assistance Agency, No. 1784CV02682-BLS2 (Mass. Super. Ct. Aug. 23, 2017).

153. Press Release, Letitia James, N.Y. Att'y Gen., AG James Sues Student Loan Servicer for Mismanaging Loan Forgiveness Program (Oct. 3, 2019), https://ag.ny.gov/press-release/2019/ag-james-sues-student-loan-servicer-mismanaging-loan-forgiveness-program.

154. Complaint, *supra* note 136, at 14–18.

155. *Id.* at 30–35.

156. *Id.* at 22–30.

> service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code . . . .[157]

Parsing the statute suggests that "public service" applies to: (1) work in government, (2) work at a nonprofit, 501(c)(3) organization, and (3) a full-time job, with any other type of employer, in the listed fields.[158] However, the Trump Administration imposed additional requirements for certain employers to qualify: the USED required borrowers to attest that their employer's "primary purpose" was to provide public service.[159] Put differently, an organization that served the public in one of the statute's listed fields, but primarily focused on a non-public mission, was not considered public service.[160] The addition left many borrowers who worked in the same positions and fields as PSLF-qualified borrowers without a prospect of forgiveness.

One notorious example of this dilemma is the American Bar Association (ABA). The ABA is an organization that provides public interest law services and advances legal education initiatives, but primarily serves the betterment of the legal community.[161] Many jobs within the ABA likely met the CCRAA's definition of public service, but failed the USED's "primary purpose" requirement.[162] These dueling standards became the subject of litigation. In 2016, the ABA sued the USED because the Department refused to recertify the ABA as a qualifying employer.[163] As the Trump Administration transitioned in, it defended the classification, but made two arguments not employed by the Obama Administration: (1) that certifications were preliminary and always subject to future approval,[164] and (2) the ABA failed the newly-created primary purpose test.[165] In February 2019, the U.S. District Court for the District of

157. College Cost Reduction and Access Act of 2007, Pub. L. No. 110-84, § 401, 121 Stat. 784, 801 (2007).

158. *Id.*

159. *See* FED. STUDENT AID, PUBLIC SERVICE LOAN FORGIVENESS (PSLF): APPLICATION FOR FORGIVENESS, http://web.archive.org/web/20200116112646/https://studentaid.gov/sites/default/files/public-service-application-for-forgiveness.pdf [hereinafter PSLF JANUARY 2020 APPLICATION FORM] (last visited Feb. 25, 2021) (asking borrowers who work for non-governmental, non-501(c)(3) employers to certify that an employer's "primary purpose" falls into a listed category).

160. Am. Bar Ass'n v. U.S. Dep't of Educ., 370 F. Supp. 3d 1, 28–29 (D.D.C. 2019).

161. *Id.* at 13.

162. *ABA Sues over Public Service Loan Forgiveness Denials*, A.B.A. FOR L. STUDENTS (Dec. 20, 2016), https://abaforlawstudents.com/2016/12/20/aba-sues-public-service-loan-forgiveness-denials/.

163. *Id.* (noting that the Obama Administration's USED had previously certified the ABA as a public service employer).

164. Lorelei Laird, *In Answer to ABA Lawsuit, Education Department Says It Never Changed Loan Forgiveness Rules*, ABA JOURNAL (Mar. 28, 2017, 6:50 AM), https://www.abajournal.com/news/article/in_answer_to_aba_lawsuit_education_department_says_it_never_changed_loan_fo.

165. *Am. Bar Ass'n*, 370 F. Supp. 3d at 25.

Columbia found that the "primary purpose" requirement was "arbitrary and capricious"[166] and ordered the USED to vacate its use.[167]

Despite the District Court's order, the USED continued enforcing the invalidated requirement for nearly a year after the decision.[168] As late as January 2020, Question 13 of the forgiveness application required borrowers to identify their employer's primary purpose among a list of PSLF-qualifying fields, and instructed those who could not find a listed primary purpose to not apply.[169] Only between January and April 2020 did the USED revise[170] the PSLF application to remove all references to an employer's primary purpose.[171]

It is difficult to estimate the impact of the USED's continued use of the primary purpose rule post-decision because that group includes an unknown number of *de facto* rejections. This term refers to borrowers who obeyed Question 13's instructions and did not submit an application because their employer's primary purpose was not listed. Borrowers who submitted an application despite not finding a listed primary purpose would have their denials categorized within the USED's datasets as "Employer Not Eligible."[172] However, that category inexplicably disappeared from the USED's data reports in December 2019. In September 2019, the last report that listed "Employer Not Eligible" as a category, the group composed 2% of all rejections.[173] Notably, 2% of over 263,000 rejected applications is still a large figure and does not include the aforementioned *de facto* rejections. Combining those two groups together may comprise a significant number of borrowers who were denied forgiveness because the Trump Administration continued to enforce an invalidated interpretation of public service.

166. The judge noted that the USED lacked a "reasoned analysis" for implementing the primary purpose standard and failed to take "into account the serious reliance interests affected." *Id.* at 17.

167. *Id.* at 40.

168. *See* PSLF JANUARY 2020 APPLICATION FORM, *supra* note 159, at 2 (question 13).

169. *Id.*

170. It is certainly possible that the (at least) eleven-month delay between the District Court's order and the USED's corrections could be the result of bureaucratic inefficiencies. Any changes to the PSLF application form could require review by both interagency attorneys and specialists in the Office of Management and Budget (OMB). That said, such a lengthy delay for a simple adjustment (removing one question) appears inconsistent with the immediacy and urgency of the District Court's order.

171. *Compare* PSLF JANUARY 2020 APPLICATION FORM, *supra* note 159, *with* FED. STUDENT AID, PUBLIC SERVICE LOAN FORGIVENESS (PSLF): APPLICATION FOR FORGIVENESS, https://studentaid.gov/sites/default/files/public-service-application-for-forgiveness.pdf [hereinafter PSLF CURRENT APPLICATION] (last visited Feb. 25, 2021).

172. The USED defines this category as: "The borrower submitted an application that is requesting forgiveness based on an employer that has been deemed ineligible for the PSLF program." *See November 2020 PSLF Data Report*, *supra* note 8 (row 29 of the "Definitions" tab).

173. *See* discussion *supra* note 96.

2. *Obstructing Oversight*

The Trump Administration also hindered meaningful oversight over student loan servicers. These actions, which obstructed investigations by both federal and state agency officials, provided carte blanche for servicers to operate without investigations and sanctions.

On the federal agency level, the USED severely limited the CFPB's ability to investigate servicer abuses. In April 2019, then-CFPB Director Kathy Kraninger revealed that Bureau investigators attempted to investigate the USED's Direct Loans servicers.[174] However, the servicers were uncooperative, telling CFPB investigators that the USED instructed them to refuse information production requests over privacy concerns.[175] While the Bureau's leadership had discretion to litigate the servicers' noncompliance with Bureau investigators, then-Director Kraninger chose "not to pick that fight."[176] In short, the Trump Administration's USED scuttled the CFPB's efforts to investigate servicers, while the Bureau's Director (appointed by President Trump) elected to not litigate the USED's obstruction. These efforts blocked federal officials from investigating servicers and recommending fixes to limit abuses.[177]

Additionally, the USED provided loan servicers with legal cover from state enforcement actions. In 2019, a group of Attorneys General from twenty-one states requested that then-Secretary DeVos "reverse the limitations" the USED enacted to prevent servicers from sharing loan information with state law enforcement agencies.[178] Under previous administrations, federal and state law enforcement agencies operated dual oversight roles over the loan servicing industry, and worked together to secure significant protections and relief for borrowers.[179] But during the Trump Administration, that relationship turned frosty, chilling any collaboration between federal and state agents to check servicers and ensure compliance with consumer protection laws.

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174. Letter from Kathleen L. Kraninger, Dir., Consumer Fin. Prot. Bureau, to Elizabeth Warren, U.S. Sen., Addressing Concerns over CFPB Actions (Apr. 23, 2019), https://legacy.npr.org/documents/2019/may/042319-letter.pdf ("Since December 2017, student loan servicers have declined to produce information requested by the Bureau for supervisory examinations related to Direct Loans and Federal Family Education Loan Program (FFELP) loans held by the Department based on the Department's guidance.").

175. Chris Arnold, *CFPB Chief Says Education Department Is Blocking Student Loan Oversight*, NPR: BUSINESS (May 16, 2019, 5:00 AM), https://www.npr.org/2019/05/16/723568597/cfpb-chief-says-education-department-is-blocking-student-loan-oversight.

176. Chris Arnold, *Exclusive: Turf War Blocked CFPB from Helping Fix Student Loan Forgiveness Program*, NPR (Oct. 15, 2019, 10:52 AM), https://www.npr.org/2019/10/15/769326896/exclusive-turf-war-blocked-cfpb-from-helping-fix-student-loan-forgiveness-progra.

177. *Id.*

178. Letter from the Att'ys Gen. of Colo., N.J., Wash., Cal., Conn., Del., D.C., Haw., Ill., Iowa, Md., Mass., Mich., Minn., Nev., N.Y., N.C., Or., Pa., R.I., and Va., to Betsy DeVos, Sec'y, U.S. Dep't of Educ., Raising Concerns of Private Servicer Disclosures (Apr. 4, 2019), https://www.marylandattorneygeneral.gov/News%20Documents/Final%20AGs%20Letter%20to%20DOE%204.4.19.pdf.

179. *Id.* at 3.

All of these problems—an ineffective statutory and regulatory scheme, servicer misconduct, shifting standards for qualifying employment, and inadequate oversight over student loan markets—contributed to PSLF's current failures. As discussed in the next Part, the complexity of these intertwined issues requires immediate action to ensure that the program can succeed.

III. THE IMPERATIVE OF IMMEDIATE AND SWEEPING REFORM

Some student loan industry experts have speculated that PSLF will soon correct itself via the "snowball effect." The snowball effect is a theory[180] that the program, aided by Obama Administration reforms, will collect qualified borrowers and eventually create an "exponentially increasing" PSLF success rate.[181] However, a passive approach does not adequately address PSLF's problems. While the Obama Administration's initiatives have certainly directed borrowers toward PSLF-qualifying loans, they do not check for the nefarious actions of servicers or political interference from the Executive Branch. Moreover, the program has been targeted for cuts by politicians on both sides of the aisle—jeopardizing the ability of PSLF to correct itself before major changes are implemented. This Part will detail the reasons why comprehensive solutions are essential to resolving the program's problems.

A. THE "SNOWBALL EFFECT" IS INSUFFICIENT

The concept behind the snowball effect is overly simple; it fails to account for the nefarious actions of servicers and ignores present-day statistics that show many borrowers are still disqualified from earning forgiveness. As demonstrated by those rejected under TEPSLF,[182] the Obama Administration's measures cannot correct for servicer abuse or any rules that subsequent administrations implement to limit employer eligibility.[183]

Moreover, empirical data suggest that a substantial number of borrowers are not on track for forgiveness. Table 3 indicates that as of 2020—over a decade after some of the Obama Administration's reforms went into effect—nearly 30% of federal loan borrowers still hold a Perkins Loan or FFEL,

180. For example, Travis Hornsby, founder of "Student Loan Planner," a popular student loan consulting service, argues in a podcast that PSLF is about to enter a "snowball effect" where the program, aided by Obama Administration reforms, will collect more qualified borrowers over time. *See* Travis Hornsby, *Episode 2: What is the PSLF Snowball?*, STUDENT LOAN PLANNER (Sept. 11, 2019), https://www.studentloanplanner.com/podcast-what-is-pslf-snowball/.

181. Travis Hornsby, *Why the PSLF Success Rate Will Hit Over 50% by 2024*, STUDENT LOAN PLANNER (Sept. 20, 2019), https://www.studentloanplanner.com/pslf-snowball-effect/.

182. For a discussion of TEPSLF, see *supra* Part II.A.2.

183. *See, e.g.*, Am. Bar Ass'n v. U.S. Dep't of Educ., 370 F. Supp. 3d 1, 27 (D.D.C. 2019) (identifying three new standards that the Department of Education used to assess PSLF applications: the aforementioned "primary purpose" standard, the "School-like Setting" standard, and the "Outright Provision of Services" standard).

disqualifying them from receiving complete forgiveness.[184] Table 4 illustrates a similar problem: in 2020, roughly 20% of Direct Loans borrowers held a level or graduated repayment plan, making them ineligible for relief.[185] Obviously, not every federal loan borrower is interested in pursuing forgiveness. However, there are bound to be some PSLF-interested borrowers who are ultimately denied relief because they hold a disqualifying loan.

Any PSLF analysis is caveated by a larger issue: there is no consensus on what an acceptable rejection rate is. There are no debt relief programs that come close to PSLF's broad scope of professions and depth of forgiveness. At the federal level, IBR, PAYE, and REPAYE offer *taxable* loan forgiveness for borrowers after twenty or twenty-five years of on-time payments.[186] However, there is no data on the efficacy of these federal programs: not enough time has elapsed for a borrower to obtain forgiveness.[187] Meanwhile, although states offer a variety of loan forgiveness plans, they are often limited in scope and forgiveness.[188]

Manufacturing a "successful" rejection rate illustrates another concern: cost. Between October 2017 and November 2020, the 3776 borrowers who obtained relief eliminated over $290 million in debt—an average discharge of $76,906 per person.[189] Assuming that average held, a rejection rate of 80% on the current pool of applicants would still lead to over 45,000 students receiving over $3.50 billion in relief.[190] At a 50% rejection rate, the cost would be about $8.74 billion.[191]

PSLF, effectively, faces a double bind. Its rigid statutory text and insufficient regulatory framework deny relief to a substantial percentage of applicants. Yet the program's astronomically high rejection rate has kept costs low. If PSLF did successfully self-correct, the granted relief could add billions to the USED's budget.[192] Indeed, this possible budgetary clog has created

184. *See* "FY 2019" row *supra* Table 3.

185. *See* "FY 2019" row *supra* Table 4.

186. Unlike PSLF, however, loan forgiveness offered through the IBR, PAYE, and REPAYE plans may be considered taxable income. *Tax Penalty Hits Student Loan Borrowers in Income-Driven Repayment Plans for the First Time*, INST. FOR COLL. ACCESS & SUCCESS (Apr. 12, 2018), https://ticas.org/affordability-2/tax-penalty-hits-student-loan-borrowers-income-driven-repayment-plans-first-time/.

187. IBR, PAYE, and REPAYE repayment plans were made available in 2007, 2011, and 2015, respectively; the earliest any borrower could qualify for relief under twenty years of forgiveness solely by using these programs would be 2027. *See Income-Driven Repayment Plan*, *supra* note 145.

188. *See Student Loan Forgiveness Programs by State*, COLL. INVESTOR, https://thecollegeinvestor.com/student-loan-forgiveness-programs-by-state/ (last visited Feb. 25, 2021) (listing different state-run student loan forgiveness programs; such programs offer fixed forgiveness amounts and/or are limited to a particular industry).

189. *See November 2020 PSLF Data Report*, *supra* note 8 (rows 15–17).

190. Calculated by multiplying a 20% acceptance rate with the 227,382 unique borrowers who have applied for PSLF, and then multiplying that figure by the average relief of $76,906 per borrower.

191. Calculated by multiplying a 50% acceptance rate with the 227,382 unique borrowers who have applied for PSLF, and then multiplying that figure by the average relief of $76,906 per person.

192. Note that cost itself is not a concern for PSLF: The USED has not set any limits on the forgiveness distributed, and so program money will not run out. *See* CONG. BUDGET OFF., OPTIONS FOR REDUCING THE

another threat preventing PSLF from slowly correcting itself: political intervention.

B. CAPPING BENEFITS DISPROPORTIONATELY HARMS GRADUATE STUDENTS

As PSLF's potential costs mount, politicians have proposed drastic cuts—threatening changes before the program could possibly "snowball" toward success. In 2014, President Obama's administration proposed limiting PSLF's benefits to $57,500 per borrower.[193] The limitation was appealing to budget hawks, as the proposal held an estimated $6.7 billion in potential savings.[194] However, the proposed cap was never introduced in Congress.[195]

In hindsight, the Obama Administration's cap of $57,500 comes somewhat close to the $76,906 average that successful PSLF applicants have received. However, the proposed cap disproportionately harms borrowers who hold far more debt. This qualm acutely affects graduate and professional students,[196] and becomes apparent through a hypothetical with some back-of-the-napkin math. Suppose an incoming law student aspired to work as a public defender and took out federal loans to fund her legal education. The median debt of a law school graduate hovers around $110,000.[197] The median entry salary for a law school graduate at a public defender's office is $58,300.[198] PSLF-qualifying loans calculate a monthly payment at 10% of income,[199] and interest rates for graduate students are set at 6.08%.[200] Graduate student borrowers must also pay a 1.062% origination fee.[201]

DEFICIT: 2019 TO 2028, at 34–35 (2018), https://www.cbo.gov/system/files/2019-06/54667-budgetoptions-2.pdf (proposing a limit on forgiveness for borrowers or, alternatively, the elimination of PSLF entirely). However, a continuously inflating cost may make PSLF a target for budget cuts. *See, e.g.*, *id.*

193. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2015 APPENDIX 363–64 (2014), https://www.govinfo.gov/content/pkg/BUDGET-2015-APP/pdf/BUDGET-2015-APP.pdf; *see also* Robert Farrington, *What Does the PAYE Expansion Proposal Really Mean?*, FORBES (July 17, 2015, 8:48 AM), https://www.forbes.com/sites/robertfarrington/2015/07/17/what-does-the-paye-expansion-proposal-really-mean/#57e7571e3733.

194. JASON DELISLE, ECON. STUD. AT BROOKINGS, THE COMING PUBLIC SERVICE LOAN FORGIVENESS BONANZA 3 (2016), https://www.brookings.edu/wp-content/uploads/2016/09/es_20160922_delisle_evidence_speaks.pdf.

195. *See* Andrew Josuweit, *Op-Ed: Trump's Plan to Cut This Student Loan Program Is a Big Mistake*, YAHOO FIN. (May 25, 2017), https://finance.yahoo.com/news/op-ed-trump-apos-plan-145206637.html.

196. This is not to say that undergraduate students do not have significant debt. However, undergraduate students graduate with an average debt of $29,000—well within the Obama Administration's proposed cap. *See* COLL. BD., TRENDS IN STUDENT AID 2019, at 4 (2019), https://research.collegeboard.org/pdf/trends-student-aid-2019-full-report.pdf.

197. Wesley Whistle, *Is Your Law School Worth It?*, FORBES (Nov. 21, 2019, 4:36 PM), https://www.forbes.com/sites/wesleywhistle/2019/11/21/is-your-law-school-worth-it/#63c05f038c7a.

198. *Findings from the NALP/PSJD 2018 Public Service Attorney Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (June 2018), https://www.nalp.org/0618research.

199. *Income-Driven Repayment Plans*, *supra* note 145.

200. *Federal Interest Rates and Fees*, FED. STUDENT AID, https://studentaid.gov/understand-aid/types/loans/interest-rates#rates (last visited Feb. 25, 2021).

201. Ryan Lane, *How Student Loan Fees Work and What They Cost*, NERDWALLET (Oct. 13, 2020), https://www.nerdwallet.com/blog/loans/student-loans/student-loan-fees/.

To qualify for relief, the aspiring public defender would make 120 monthly payments, each capped at 10% of income—totaling $58,300, and also pay an origination fee of $944.46. Under PSLF, the remaining balance and interest is completely forgiven. However, if the proposed cap was in effect, our borrower would have $116,744.46 covered[202]—but would still owe at least $53,000 in interest.[203] This example also excludes the consideration of any undergraduate student debt, which would continue to accrue interest if not fully paid. Simply put, a cap on forgiveness would have greatly diminished PSLF's debt-reducing appeal to graduate students and deterred them from pursuing the program.[204]

C. ELIMINATING PSLF HARMS BORROWERS AND PUBLIC SECTOR EMPLOYERS

On the other hand, the Obama Administration's proposed cap of $57,500 is better than $0, which was the PSLF relief amount recommended by President Trump.[205] In all of its proposed budgets, the Trump Administration recommended eliminating PSLF.[206] Doing so would create large[207] fiscal savings: the Congressional Budget Office projected that removing the program would save between $4.7 and $5.8 billion through 2023, and between $18.0 and $22.4 billion through 2028.[208] Justifying a program that incurs these costs requires addressing a simple question: why is PSLF important?

To borrowers, PSLF is a critical program that mitigates the financial risks associated with entering public service. As the cost of a higher education in the United States rises,[209] so does the number of students who borrow loans.[210] In 2018, 43% of Americans incurred some form of debt for their education.[211]

202. Adding together the $58,300 paid over ten years of on-time payments, the $57,500 forgiven under a capped PSLF, and the $944.46 origination fee.

203. A simple loan calculator shows that a loan of $110,000 set to a twenty-five-year loan term with an interest rate of 6.08% would generate, in ten years, roughly $60,315 in interest. Under a capped system, our hypothetical public defender would have paid over $116,000 on a $110,000 loan, but still have over $53,500 in interest remaining.

204. Hilary Wething, *Don't Pull the Rug Out from Under PSLF Recipients*, ECON. POL'Y INST.: WORKING ECON. BLOG (May 23, 2014, 12:41 PM), https://www.epi.org/blog/dont-pull-rug-pslf-recipients/.

205. *See* discussion *supra* note 18.

206. *See* discussion *supra* note 18.

207. It is worth noting that "large" is a relative term, and perhaps PSLF's savings are not so large when placed against the scale of the budget for the entirety of the federal government, or even different programs.

208. CONG. BUDGET OFF., supra note 192, at 34.

209. Abigail Johnson Hess, *The Cost of College Increased by More Than 25% in the Last 10 Years—Here's Why*, CNBC: MAKE IT (Dec. 13, 2019, 10:18 AM), https://www.cnbc.com/2019/12/13/cost-of-college-increased-by-more-than-25percent-in-the-last-10-years.html.

210. Abigail Johnson Hess, *Student Debt Increased by 107% This Decade, Federal Reserve Data Shows*, CNBC: MAKE IT (Dec. 30, 2019, 11:21 AM), https://www.cnbc.com/2019/12/30/student-debt-totals-increased-by-107percent-this-decade.html.

211. FED. RESERVE, REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2018, at 43 (2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

Student borrowers collectively owe over $1.6 trillion in student loan debt.[212] Yet the salaries offered by public service opportunities may not assuage student debt fears. In his closing remarks on the CCRAA, Senator Kennedy referenced three public service fields—education, criminal justice, and developmental needs—which offer relatively low salaries.[213] By guaranteeing forgiveness in exchange for service, PSLF makes public sector opportunities financially feasible for borrowers to undertake.

This stability is especially enticing to graduate and professional students, who likely have accumulated additional debt from their studies. While professionals may genuinely wish to serve the public sector, many take higher-paying private sector positions to manage student debt. PSLF helps bridge debt concerns and encourages students to assume public service careers. For example, a 2019 survey of graduating medical students found that of the 43% of graduates who planned to pursue a loan forgiveness program, 75% indicated that PSLF was their program of choice.[214] The same survey also shows that interest in PSLF among medical school graduates has risen every year since 2015—demonstrating the program's appeal in professional circles.

PSLF is also a critical recruitment and retention tool for public sector employers. As society advances, many positions require advanced degrees to fill specialized roles.[215] PSLF mitigates the significant debt incurred in earning these degrees, allowing public sector employers to compete against their private sector counterparts in talent recruitment. In responding to a Congressional inquiry on how PSLF's elimination would affect the U.S. Navy, the Department of Defense wrote: "[e]liminating or restricting the PSLF Program would have a significant impact on recruiting and retention . . . at a time when the services are vying with an expanding and robust private sector to recruit and retain our most capable people."[216]

In sum, PSLF is worth saving because it plays two critical roles: it helps public sector employers attract talent and provides graduates with an attractive means of managing student debt. Furthermore, the program's problems deserve immediate reform to ensure its benefits are accessible to all federal borrowers. The next Part provides a blueprint of actions to accomplish robust reform.

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212. Zack Friedman, *Student Loan Debt Statistics in 2020: A Record $1.6 Trillion*, FORBES (Feb. 3, 2020, 6:51 PM), https://www.forbes.com/sites/zackfriedman/2020/02/03/student-loan-debt-statistics/#108d8414281f.

213. 153 CONG. REC. S11,242 (daily ed. Sept. 7, 2007) (statement of Sen. Ted Kennedy) ("If . . . you want to become a schoolteacher, you want to work in the criminal justice system, you want to work with special needs children, you want to work for a nonprofit, you will never pay more than 15 percent of your income in repayment of your debt.").

214. ASS'N OF AM. MED. COLLS., MEDICAL SCHOOL GRADUATION QUESTIONNAIRE: 2019 ALL SCHOOLS SUMMARY REPORT 43–44 (2019), https://www.aamc.org/system/files/2019-08/2019-gq-all-schools-summary-report.pdf.

215. Laura Pappano, *The Master's as the New Bachelor's*, N.Y. TIMES (July 22, 2011), https://www.nytimes.com/2011/07/24/education/edlife/edl-24masters-t.html?_r=1&ref=edlife.

216. U.S. DEP'T OF DEF., INFORMATION PAPER ON PUBLIC SERVICE LOAN FORGIVENESS IMPACT 2 (2017), https://edlabor.house.gov/imo/media/doc/2017-11-14%20RFI%20Public%20Service%20Loan%20Forgiveness%20Impact3.pdf.

IV. CONCEPTUALIZING COMPREHENSIVE REFORM

Congress and the Department of Education must develop a multi-pronged approach to address PSLF's numerous problems. Once these comprehensive reforms are implemented, PSLF will gradually improve, which will increase program use and create a powerful impetus for further reform.

A. THE FIRST STEP: FIXING A FAILED FRAMEWORK

Before addressing other issues, Congress and the USED must first broaden access to PSLF and ensure that participating public servants have a strong likelihood of receiving forgiveness. To do this, both entities must address the problems that underlie PSLF's rejections: limitations on which loans qualify for forgiveness, shifting definitions of public service, and servicer misconduct.

1. Legislating Accessibility

Congress should amend PSLF to allow all types of federal loans and repayment plans to qualify for forgiveness. As detailed earlier, PSLF's statutory text restricts forgiveness loans of a specific type of federal loan (a Direct Loan) and repayment plan (income-driven repayment). These specifications prevent at least a third of current student borrowers from qualifying for relief.[217] Importantly, there are also no obvious[218] policy reasons beyond cost to continue limiting forgiveness to just income-driven Direct Loans packages.

This change has three major benefits. First, it ensures that borrowers who have both committed themselves to public service and made ten years of loan payments are not denied forgiveness for simply holding an ineligible federal loan. It would remedy potential issues for many current borrowers. In 2020, 12.7 million borrowers held federal loans that were not Direct Loans,[219] while over 2 million borrowers had a disqualifying repayment plan.[220] Broadening PSLF's requirements would ensure that these borrowers can access forgiveness.

Second, this change would reduce both the need and negative effects of reconsolidation. As discussed earlier, reconsolidation is a reset button that allows a borrower to begin qualifying for forgiveness, but disregards past payments made in good faith toward the program's requirements.[221] A

217. *See* discussion *supra* Part III.A.

218. One hypothetical explanation for requiring income-driven payments is that Congress wanted to ensure that a student was making significant payments on her Direct Loan (and paying a lower amount via a graduated repayment plan was insufficient). However, the existence of the TEPSLF program, which offers forgiveness for meeting all of the PSLF's requirements sans income-driven repayments, suggests that specific requirement is not essential to program operations.

219. *See* "FY 2020" row *supra* Table 3.

220. *See* "FY 2020" row *supra* Table 4.

221. *See* discussion *supra* note 125.

borrower's need to reconsolidate[222] into a PSLF-qualifying package is completely eliminated by allowing payments on all federal loans and repayment plans to count toward forgiveness.

Finally, broadening PSLF's requirements to include all federal loans would limit servicer misconduct. As detailed in Part II.A.2, loan servicers practically serve as program gatekeepers, and have steered borrowers away from PSLF-qualifying packages. The proposal detailed above reduces a borrower's need to reconsolidate loans to qualify for forgiveness, and thus deprives servicers of opportunities to provide erroneous program information.

2. *Promulgating Protections*

While Congress expands PSLF's accessibility via legislative reform, the USED should issue rules to protect borrowers from servicer misconduct. If effectively designed and implemented, these rules would clarify the ambiguous public service requirement, enact strong oversight measures for servicers, and protect current applicants from political interference.

First, the USED should implement a new rule to clarify (1) what qualifies as public service, and (2) how to classify a payment toward forgiveness as on-time. The program's current regulations of these criteria hamper borrowers: there is an ever-changing definition of what qualifies as public service,[223] while recertification delays slow a borrower's path toward forgiveness.[224]

The USED should clarify that public service includes employment for (1) governmental entities, (2) 501(c)(3) nonprofit organizations, and (3) any Standard Occupational Classification[225] codes (SOCs) that the USED finds worthy of qualifying for forgiveness. The SOC system is a federal statistical standard that classifies workers within different occupational categories.[226] SOCs are superior to PSLF's current classifications for categorizing employment because they sort positions using occupational duties, not the goals of employers.[227] In addition, SOC codes are readily available and apply to nearly every employment position in the United States, providing borrowers with clarity on whether their job qualifies for forgiveness.[228]

222. If all federal loans and repayment plans qualified for forgiveness, a borrower would only need to reconsolidate if she was frustrated with paying multiple loans and wished to centralize all her student loan debt into one payment plan.

223. *See* discussion *supra* Part II.B.1.

224. *See* discussion *supra* Part II.A.2.

225. For the most recent SOCs, see OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, STANDARD OCCUPATIONAL CLASSIFICATION MANUAL (2018), https://www.bls.gov/soc/2018/soc_2018_manual.pdf. As an example, Congress could allow all individuals working in the 25-1000 Classification, which includes educational instruction and library occupations, to qualify for forgiveness. *See id.* at 78–91.

226. *Standard Occupational Classification*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/soc/ (last visited Feb. 25, 2021).

227. *Id.*

228. *Id.*

The USED should also redefine the meaning of an "on-time" payment to allow borrowers to make up payments missed due to forbearance.[229] Current regulations exclude the use of lump-sum payments in calculating whether 120 qualifying payments are made.[230] Redefining "on-time" to specifically allow lump-sum payments to make up forbearance-induced late payments would ensure borrowers are not penalized for delays that are no fault of their own.

Second, the USED should promulgate regulations to curb the influence of servicers within the student loan market. Addressing this issue requires a three-pronged solution: (1) greater oversight to ensure servicer compliance, (2) additional servicers to service the PSLF program, and (3) new rights to afford borrowers recourse if they encounter servicer abuse. The USED should codify rules facilitating authority for federal and state agencies to coordinate and review servicer actions and bring litigation as necessary. At minimum, promulgating oversight requirements would create clear violations of federal law for any USED official who seeks to obstruct investigations.

Instead of having FedLoan service all PSLF loans,[231] the USED should also allow multiple federal loan servicers to service the program. This change would diminish the monopoly that FedLoan currently holds in administering PSLF, while also partially resolving the principal-agent dilemma that non-FedLoan servicers confront when presented with a borrower who is considering forgiveness.

The USED should supplement increased oversight and additional PSLF servicers with a new borrower right: the ability to change a federal loan servicer at will. Currently, once a borrower is assigned a servicer, she may only switch servicers in limited circumstances.[232] Unless a borrower meticulously executes a switch, she is tied to her servicer for the entirety of the loan's duration.[233] This change would introduce competitiveness into the

229. Congress also holds the authority to legislate exceptions to allow periods of forbearance to count towards forgiveness. One recent example of this comes in the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed by Congress to provide relief during the COVID-19 crisis. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). Congress specifically included that during the COVID-19 pandemic, qualifying borrowers who were placed in forbearance would receive credit toward forgiveness as if they made on-time monthly payments. *Id.* § 3513.

230. *See* discussion *supra* note 150.

231. *See* discussion *supra* Part II.A.2.

232. Michael Lux, *Guide to Switching Federal Student Loan Servicers*, STUDENT LOAN SHERPA BLOG (Apr. 17, 2019), https://studentloansherpa.com/guide-switching-federal-student-loan-servicers/. Note that while attempting PSLF certification is a suggested tactic, FedLoan is the only servicer that certifies PSLF—hardly a choice. *See id.*

233. There are few incentives for a servicer to provide customer-friendly service. At best, borrower satisfaction is factored into an algorithm that the USED uses to allocate new borrowers to different servicers. FED. STUDENT AID, EXPLANATION OF ALLOCATION AND PERFORMANCE MEASURE METHODOLOGY 3, https://studentaid.gov/sites/default/files/fsawg/datacenter/servicer/06302017/ExplanationQuarterEnd063017.pdf (last visited Feb. 25, 2021) (step 8, metric 4). However, borrower satisfaction only counts for 35% of the algorithm. *Id.*

student loan market and incentivize servicers to provide optimal customer service to avoid losing borrowers.[234]

To be sure, allowing borrowers to switch servicers is not a silver bullet. There are foreseeable concerns, including logistical issues and fierce opposition from loan servicers. Regulations would need to be carefully designed to avoid forcing servicers out of the entire industry.[235] Government antitrust attorneys would need to remain vigilant to discourage servicers from colluding and offering lackluster services to the entire industry.[236] Despite these challenges, allowing borrowers to change servicers would promote the interests of borrowers in a method that, unlike increased oversight, is less prone to political interference.

B. BUILDING BLUEPRINTS FOR A BORROWER-FRIENDLY BUREAUCRACY

An enhanced regulatory regime, combined with broadened accessibility to the program, may provide a combined impetus for further innovative improvements to PSLF. If these suggested changes are implemented, then the USED will have a flourishing program that demands greater refinement and adaptation to serve an expanding number of public servants.

1. Innovating Away Information Gaps

Greater PSLF usage would incentivize the USED to invest in vital technology that streamlines information and reduces complexity for both borrowers and reviewers. Right now, to track their progress toward forgiveness, a borrower must interact with her servicer—a process fraught with rabbit holes.[237] After a borrower submits an application for forgiveness, the USED, FedLoan, and the borrower's initial servicer (if applicable) engage in a lengthy and tedious review process.[238] The sheer volume and stress of

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234. It is worth noting that the Trump Administration has promoted the opposite: in 2017, the USED commenced a bidding process to select a single servicer to manage all federal student loans. Lisa Lambert, *Trump to Offer Exclusive Contract to Service U.S. Student Loans*, U.S. NEWS & WORLD REP. (May 19, 2017, 2:57 PM), https://www.usnews.com/news/us/articles/2017-05-19/us-to-give-contract-for-student-loan-servicing-to-one-company. While that bidding was eventually scrapped, the USED has not counted out revisiting it later. Lauren Camera, *DeVos Backs Away from Single Student Loan Servicer*, U.S. NEWS & WORLD REP. (Aug. 2, 2017, 11:03 AM), https://www.usnews.com/news/education-news/articles/2017-08-02/betsy-devos-backs-away-from-single-student-loan-servicer.

235. For an overview of existing governmental regulations on loan servicers, see KEVIN M. LEWIS & NICOLE VANATKO, CONG. RSCH. SERV., R45917, FEDERAL AND STATE REGULATION OF STUDENT LOAN SERVICERS: A LEGAL OVERVIEW (2019), https://fas.org/sgp/crs/misc/R45917.pdf.

236. *See, e.g.*, Letter from Elizabeth Warren, Cory Booker, and David Cicilline, Sens. and Member of Cong., to Joseph J. Simmons, Chairman, Fed. Trade Comm'n, Regarding Antitrust Concerns Over Mergers of Student Loan Servicers (June 26, 2019), https://www.warren.senate.gov/imo/media/doc/2019.06.25%20Letter%20to%20FTC%20re%20Nelnet-Great%20Lakes%20merger1.pdf.

237. *See* discussion *supra* Part II.A.2.

238. U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-547, PUBLIC SERVICE LOAN FORGIVENESS: EDUCATION NEEDS TO PROVIDE BETTER INFORMATION FOR THE LOAN SERVICER AND BORROWERS 8 fig.2 (2018), https://www.gao.gov/assets/700/694304.pdf.

additional review could incentivize the development of an innovative alternative: a web-based platform that allows borrowers to manage their loans, submit payments, and evaluate qualifications.

Similar systems already exist in other industries. For example, homeowners can make mortgage payments through bank-sponsored websites, while some vehicle insurance companies allow drivers to modify their plans online. The concept is not foreign to the USED, either: in 2016, the Obama Administration announced an initiative to create a web-based student loan management platform.[239] However, after initially indicating support for the proposal,[240] then-Secretary DeVos cancelled the initiative in 2018.[241] A burgeoning PSLF could force the USED's hand to invest in a platform that gives borrowers greater control over their loans.

Creating an online platform would also ease PSLF's administrative burdens. The program is riddled with complex requirements and qualifications that a borrower must fulfill to receive forgiveness. An accessible platform that provides upfront information and loan management tools would allow a borrower to better track her path toward forgiveness. Moreover, it would simplify the complex vetting process a relief application goes through. Instead of contacting multiple servicers to piece together a borrower's qualifications, the USED's platform would simply track compliance throughout the loan's term.

2. *Streamlining a Path to Applicant Success*

Increased program participation could also create a catalyst for a complete restructuring of PSLF's administration. Currently, forgiveness is retroactively granted: a borrower may apply for forgiveness only after meeting the program's public service and qualifying payment requirements. However, the education loan process begins when a student enters higher education[242]—forcing most students to select their loans before even declaring a major, let alone deciding career opportunities. These decisions, if left uncorrected, could disqualify a borrower's participation in PSLF from the start.

This dilemma is best illustrated via an analogy. Suppose a client asked two chefs to make a pizza and supposed also that the client has very particular tastes. One chef is given the entire recipe, while the other receives no

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239. Ted Mitchell, *A New Vision for Serving Student Loan Borrowers*, U.S. DEP'T OF EDUC.: HOMEROOM (Apr. 4, 2016), https://blog.ed.gov/2016/04/a-new-vision-for-serving-student-loan-borrowers/.

240. Stacy Cowley, *Education Dept. Keeps Obama Plan to Streamline Loan System*, N.Y. TIMES (May 19, 2017), https://www.nytimes.com/2017/05/19/business/dealbook/education-student-loan-system.html.

241. Stacy Cowley, *Education Dept. Cancels Plan for New Student Loan System and Will Try Again*, N.Y. TIMES (Dec. 16, 2018), https://www.nytimes.com/2018/12/16/business/education-dept-cancels-plan-for-new-student-loan-system-and-will-try-again.html.

242. This is because federal loans are generally offered shortly after a student is accepted at a higher education institution. *See Award Letters*, FINAID, https://www.finaid.org/fafsa/awardletters.phtml (last visited Feb. 25, 2021).

specifications. While the former will collect the correct ingredients and produce a pizza to the client's liking, the latter will struggle with an overwhelming number of possibilities—say, for toppings, or even the crust's flour. The uninformed chef's predicament is similar to a borrower's PSLF experience. Upon admission, a student is presented with confusing[243] loan packages, yet is expected to pick PSLF-eligible loans without necessarily knowing if she is interested in the program. This hypothetical is also complicated by additional obstacles, including nefarious loan servicers and shifting interpretations of public service. Just like the unlucky pizza chef, a borrower is likely to develop an incorrect product—rendering her, absent consolidation, ineligible for forgiveness.

To remedy this, PSLF should aspire to provide its "recipe for forgiveness" to borrowers as early and as often as possible. Higher education institutions are perfectly situated to promote the program to students upon admission and throughout learning. Moreover, schools generally hold an inherent interest in the financial well-being of their graduates.[244] Of course, this promotion is contingent upon PSLF's reputation as a well-executed forgiveness program, which is best developed through the multi-pronged framework described earlier.[245]

Most importantly, proactive encouragement of the program could catalyze a crucial final reform: restructuring PSLF's administration into a forward-facing operation. Once clear definitions, robust oversight regulations, program promotions, and innovative tools are fully developed, Congress and the USED should require that borrowers register[246] for PSLF before service and payments are counted toward the program's requirements. Requiring registration for PSLF has multiple benefits: it provides borrowers with an initial check on their program eligibility, projects future forgiveness costs for the USED's budget planning, and helps servicers identify borrowers who are headed toward relief.

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243. For a review of how confusing financial award letters can be, see STEPHEN BURD, RACHEL FISHMAN, LAURA KEANE & JULIE HABBERT, DECODING THE COST OF COLLEGE: THE CASE FOR TRANSPARENT FINANCIAL AID AWARD LETTERS 12 (2018), https://d1y8sb8igg2f8e.cloudfront.net/documents/Decoding_the_Cost_of_College_Final_6218.pdf.

244. Higher education institutions are interested in their students' financial well-being (which PSLF helps secure). This is because of two things. First, there is an increasing trend for colleges and universities to show measures of their effectiveness. *See* George D. Kuh & Peter T. Ewell, *The State of Learning Outcomes Assessment in the United States*, 22 HIGHER EDUC. MGMT. & POL'Y 9, 11 (2010). Second, an important measure of an institution's effectiveness is overall alumni success in the workplace. *See* Alberto F. Cabrera, David J. Weerts & Bradford J. Zulick, *Making an Impact with Alumni Surveys*, 2005 NEW DIRECTIONS FOR INSTITUTIONAL RSCH. 5, 9 (2005).

245. *See* discussion *supra* Part IV.A.1–2.

246. To be clear, this suggestion proposes that a borrower pre-register to have payments and service counted toward forgiveness, but does not propose that a pre-registered borrower be forced to "stay the course" and remain in public service under any circumstances. Registration would be mandatory, but sustained participation would be voluntary.

CONCLUSION

PSLF is the epitome of a poorly designed government program. While its creation was certainly well-intended, its rigid statutory and regulatory requirements were a misfit for America's existing student loan infrastructure. Manipulative servicer misconduct, inconsistent interpretations of qualifying service, and repeated oversight obstruction corroded the program's ill-suited framework—setting up most applicants for eventual rejection. While the Obama Administration's loan market reforms helped borrowers access the program's required components, robust reform is needed to address PSLF's core problems and secure its successful future.

Correctly identifying the program's core problem among an ocean of red herrings is critical in order to implement effective reforms. This Note advanced a comprehensive approach to resolving PSLF's conundrum: securing borrower protections and expanding the program's breadth to apply to all federal loan borrowers. These legislative and regulatory fixes would immediately improve PSLF's administration and ability to grant relief, setting the stage for further program reform. By undertaking this critical first step, Congress and the USED can generate a powerful impetus for further program advancement.

Delivering on PSLF's promise—providing loan forgiveness for Americans who work in public service—is not just a progressive, borrower-friendly ideal. Rather, it is a nonpartisan necessity as higher education costs rise and the gap between private and public sector salaries expands. As graduates seek financial stability within their careers, a robust PSLF program is imperative to ensuring that public service positions remain filled. Through careful problem identification and comprehensive reform, Congress and the Department of Education can secure and streamline PSLF's benefits for student borrowers and public service employers to serve communities across our nation.