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Governor



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Superintendent

August 12, 2022

*Via the Federal eRulemaking Portal*

Michelle Asha Cooper, Ph.D.  
Acting Assistant Secretary for Postsecondary Education  
U.S. Department of Education  
Office of Postsecondary Education  
Lyndon Baines Johnson (LBJ) Building  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Re: Docket ID ED-2021-OPE-0077  
Notice of Proposed Rulemaking / Public Service Loan Forgiveness

Dear Assistant Secretary Cooper:

I write as Deputy Superintendent for Consumer Examinations of the New York State Department of Financial Services (“NYDFS” or the “Department”) in response to the Department of Education’s (“USDOE”) Notice of Proposed Rulemaking (“NPRM”) regarding student loans and affordability issues, published July 13, 2022. I appreciate the opportunity to comment on the NPRM.

I write to comment on the proposed amendments to the regulations governing the Public Service Loan Forgiveness (“PSLF”) Program in light of its importance to many government and nonprofit employees and the impending expiration of many of the changes to the PSLF Program announced by USDOE on October 6, 2021 (the “PSLF Waiver”).<sup>1</sup> In addition, this comment includes other suggestions regarding the administration of the PSLF Waiver that are beyond the scope of the NPRM but highly relevant to borrowers.

NYDFS supervises and regulates the activities of financial service companies, including student loan servicers. Pursuant to those responsibilities, NYDFS examines state-licensed student loan servicers for compliance with Federal and State consumer protection laws. NYDFS also

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<sup>1</sup> See U.S. Department of Education, *Fact Sheet: Public Service Loan Forgiveness (PSLF) Program Overhaul*, available at <https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul> (“USDOE Fact Sheet”).

assists consumers in resolving their student loan-related complaints, including those complaints related to PSLF, and has entered into a settlement with a federal student loan servicer in connection with the PSLF Program.<sup>2</sup> NYDFS therefore has extensive experience with servicers' practices with respect to the PSLF Program and the ways in which consumers have struggled to obtain loan forgiveness under the Program.

Despite the significant relief that the PSLF Program could provide to student borrowers who have chosen careers in public service, the execution of the program historically has fallen far short of expectations. That said, the PSLF Waiver has made improvements that have unquestionably benefitted borrowers, and NYDFS strongly supports the changes made as part of the PSLF Waiver, which have already had a life-changing impact on thousands of borrowers.<sup>3</sup>

#### I. Comments on the NPRM

NYDFS commends the USDOE for its efforts, through the NPRM and otherwise, to ensure that the PSLF Program will be implemented fairly in the future and will help borrowers obtain the forgiveness they have earned. For example, NYDFS appreciates the proposed regulation's clarity towards which types of employment can qualify for PSLF: the improved definitions of qualifying employer in the NPRM will formalize existing USDOE practices and help borrowers understand in advance whether their employment will allow them to work towards PSLF relief.

Separately, NYDFS agrees with USDOE that promulgating regulations delineating the forms of payment that would count towards the 120-month requirement, such as payment in multiple installments or lump-sum payments made in advance, will provide additional flexibility for borrowers. Ensuring that this interpretation of what constitutes qualifying payments is set out in regulation will help borrowers obtain loan forgiveness.<sup>4</sup>

In addition, NYDFS appreciates that, where possible, forgiveness would be automatic, not requiring an application from the borrower. When USDOE can do so, applying forgiveness

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<sup>2</sup> See Consent Order between the Department and Conduent Education Services, LLC, available at [https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104\\_conduent.pdf](https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104_conduent.pdf), at ¶¶ 17-21 (resolving the NYDFS's finding that the servicer misinformed borrowers regarding their eligibility for PSLF forgiveness).

<sup>3</sup> To that end, NYDFS has taken an active role in ensuring that as many borrowers as possible understand the expanded opportunities that may be available to them through the PSLF Waiver before October 31, 2022. NYDFS issued a request for information to federal student loan servicers to assess what actions those servicers were taking with respect to the PSLF Waiver. After reviewing and analyzing the responses, on July 13, 2022, NYDFS issued a letter to the servicers providing guidelines for the future, and best practices for alerting potentially eligible borrowers about the PSLF Waiver. (A copy of the July 13, 2022, letter is available on the NYDFS website at [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20220713\\_pslf](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20220713_pslf).) Subsequently, the NYDFS has had conversations with those servicers regarding their willingness to commit to adopting the best practices delineated in the July 13 letter. In addition, the NYDFS has offered 13 virtual workshops to state employees with information and advice about the PSLF Waiver, given that all New York State employees, by definition, work for a PSLF-qualifying employer.

<sup>4</sup> The Department's view is that this is fully consistent with the current USDOE policy that, under the PSLF Waiver, borrowers should not "miss[] out on credit toward PSLF because their payments were off by a penny or two or late by only a few days." USDOE Fact Sheet. NYDFS fully supports this position, and to the extent not already made explicit in the NPRM, this approach should continue as part of the PSLF regulation.

using information already available to USDOE is likely to provide relief to many additional borrowers who have earned forgiveness and may not otherwise be aware of the opportunity.

NYDFS also supports the proposed reconsideration process, which will help improve outcomes for PSLF applicants. At one point, USDOE data showed that 98% of PSLF applicants with qualifying employers were denied forgiveness.<sup>5</sup> A reconsideration process will ensure fairness and reduce the impact of any arbitrary or erroneous decision-making.

However, NYDFS believes that PSLF regulations can go further in certain respects than those proposed in the NPRM. First, USDOE should incorporate into the regulation the practice under the PSLF Waiver to allow borrowers with Federal Family Education Loan Program (“FFEL”) and Perkins loans to apply for loan consolidation and loan forgiveness and count payments made on FFEL and Perkins loans towards loan forgiveness under the PSLF Program. Although the Department supports extending the temporary PSLF Waiver, as set forth below, USDOE should make these provisions of the PSLF Waiver permanent through regulation to ensure that all potential borrowers will benefit. Despite the best efforts of USDOE, NYDFS, and other stakeholders around the country, some otherwise eligible borrowers will not find out about the opportunity for relief through the PSLF Waiver before the October 31, 2022, deadline. Those borrowers should not be denied potentially life-changing loan forgiveness because they happened not to discover this temporary opportunity in time.

Next, the Department believes that Parent PLUS loans should be brought in line with other federal loan types with respect to PSLF relief. As with FFEL and Perkins loans above, otherwise eligible payments on Parent PLUS loans should still count towards PSLF if the Parent PLUS loan is consolidated into a different type of Direct loan.

## II. The PSLF Waiver

Beyond NYDFS’s support, as expressed above, for incorporating many of the terms of the PSLF Waiver into regulation, the Department advocates an extension to the PSLF Waiver itself, especially if its terms cannot be included in the regulation. Many borrowers are still unaware of the opportunities available through the PSLF Waiver that are scheduled to expire on October 31, 2022. For example, borrowers with only Direct and government-owned FFEL loans have experienced an ongoing payment pause since before the announcement of the PSLF Waiver, and those borrowers may not be paying sufficient attention to the student loan landscape during the pause to discover that they may be eligible for PSLF relief on their government-owned FFEL loans.

Separately, reverting from the PSLF Waiver to the prior PSLF structure, only to change the terms of PSLF once again when the final regulation takes effect next year, will only result in confusion and harm to borrowers and add unnecessary regulatory complexity. NYDFS strongly encourages USDOE to extend the PSLF Waiver until the effective date of the final rule to ensure a smoother transition. In the alternative, if the October 31, 2022, deadline must be preserved,

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<sup>5</sup> See *Public Service Loan Forgiveness Data*, June 2021, cell C45, “Forms” tab, available at <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data> (showing 97.8% of processed forms meeting employment certification requirements were denied).

USDOE should ensure that consolidations or employment certifications made after that deadline still allow qualifying payments to count that were made before October 31, 2022.

In addition, USDOE is in the process of making a one-time account adjustment regarding which payments will count towards income-driven repayment (“IDR”) forgiveness.<sup>6</sup> Although NYDFS supports the one-time adjustment as another way to ensure borrowers will receive loan forgiveness to which they are entitled, the timing of the one-time adjustment, set to take effect in late 2022, may increase complexity for borrowers. For example, public-service borrowers in IDR programs may wait to pursue PSLF relief until reviewing the impact of this one-time adjustment, which may occur shortly before or even after the expiration of the PSLF Waiver. Combined with the scheduled end of the federal payment pause and the many recent federal student loan servicer transfers, borrowers will soon face a dizzying array of account changes, servicer transfers, and the conclusion of temporary relief programs at roughly the same time. Along with extending the PSLF Waiver period, which would help remove at least one potential source of confusion during this eventful time, NYDFS suggests that USDOE ensure that the one-time adjustment does not negate borrowers’ past payments and employment periods for PSLF purposes.

NYDFS is happy to discuss any of the above or any other ways we can partner with USDOE on behalf of borrowers. If you have any questions about this correspondence, please contact Terry McMahon, Assistant Counsel, Consumer Examinations at (212) 837-7314 or [terry.mcmahon@dfs.ny.gov](mailto:terry.mcmahon@dfs.ny.gov).

Sincerely,

/s/ Serwat Farooq

Serwat Farooq  
Deputy Superintendent  
Consumer Examinations  
Consumer Protection and Financial Enforcement Division

cc: Richard Cordray, COO, Federal Student Aid, U.S. Department of Education

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<sup>6</sup> See USDOE, *Income-Driven Repayment and Public Service Loan Forgiveness Program Account Adjustment*, available at <https://studentaid.gov/announcements-events/idr-account-adjustment>.