COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
MAURA HEALEY
ATTORNEY GENERAL

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
ROB BONTA
ATTORNEY GENERAL

STATE OF ILLINOIS
OFFICE OF THE ATTORNEY GENERAL
KWAME RAOUL
ATTORNEY GENERAL

August 12, 2022

Submitted via Federal eRulemaking Portal

The Honorable Miguel Cardona
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Jean-Didier Gaina
United States Department of Education
400 Maryland Avenue, SW
Room 2C172
Washington, D.C. 20202

Re: Docket ID ED-2021-OPE-0077

Dear Secretary Cardona and Mr. Gaina,

We, the undersigned Attorneys General of Massachusetts, California, Illinois, Colorado, Connecticut, Delaware, the District of Columbia, Michigan, Minnesota, New Jersey, New Mexico, Nevada, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, as well as the State of Hawaii Office of Consumer Protection, write to share our views on the U.S. Department of Education's ("ED") proposed rulemaking regarding borrower defense to repayment, Public Service Loan Forgiveness (PSLF), and closed school discharge.

We wish to express our strong support for ED's regulatory goals and many of the measures adopted by ED in these proposed regulations. Our Offices have seen firsthand how inadequate regulations and servicing failures have wrought confusion and left borrowers deprived of critical protections and relief. We commend ED for undertaking such important and far-reaching regulatory reforms.

We also wish to highlight aspects of these proposals that we believe should be revised in the interest of achieving equitable and transparent relief for student borrowers while promoting efficiency and regulatory clarity. In particular, we encourage ED to simplify and clarify the manner in which borrowers and States can raise state law and state court judgments as the basis for borrower defense claims and ensure fair treatment of borrowers with pending and approved claims. In the context of PSLF, we encourage ED to take additional regulatory steps to ensure the program reaches all borrowers who serve our communities and that the process by which borrowers may participate in the program is as simple and automated as possible. For borrowers who attended a closed school, we ask that ED clarify the mandatory nature of borrower relief, as well as the relevant timelines.

I. BORROWER DEFENSE TO REPAYMENT

We support ED's proposed borrower defense regulations. While we include recommendations that would render the proposed regulations more efficient and comprehensive, we believe ED's proposals are necessary changes that will benefit both borrowers and taxpayers.

State Attorneys General have considerable firsthand experience and insight into both the complexities and importance of the borrower defense process. Our Offices have made addressing for-profit schools' mistreatment of student borrowers a priority and have years of experience helping victimized borrowers apply for borrower defense relief. Numerous investigations and enforcement actions undertaken by our Offices have revealed widespread misconduct by predatory, for-profit schools. Such schools routinely deceive and defraud students, employing a multitude of unlawful tactics to line their coffers with federal student-loan funds at borrowers' expense. Through our investigations, our Offices have spoken with numerous students who, while seeking to uplift themselves and their families, were lured into programs with the promise of employment opportunities and higher earnings, only to be left with little to show for their efforts aside from a mountain of unaffordable, nondischargeable debt.

In our role supporting and protecting student loan borrowers, State Attorneys General have worked closely with borrowers and ED to submit borrower defense applications on behalf of our constituents. Our Offices have considerable expertise regarding both the nature of institutional misconduct that could and should lead to a successful borrower defense claim, and the considerable obstacles facing borrowers who seek to apply for such relief on their own. In 2015, our Offices worked closely with ED to draft the 2016 borrower defense rule, and we worked hard to defend that rule from the previous administration's unlawful efforts to repeal it.[1]

Indeed, following the previous administration's replacement of the 2016 rule with a wholly inadequate regulation that benefited predatory schools at the expense of victimized

[1] *See generally Massachusetts et al. v. DeVos*, 17-cv-1331 (D.D.C); *see also* Memorandum Opinion and Order, *Bauer v DeVos*, 17-cv-1330 (D.D.C. Sept. 12, 2018) (granting state and private plaintiffs Summary Judgment in combined cases and finding that the Department unlawfully delayed Borrower Defense Regulations).

borrowers, we believe ED had no choice but to revisit these regulations, once again. We agree with ED's observation that "too many borrowers have been unable to access loan relief" and that this has been, in part, due to regulatory requirements that have "created unnecessary or unfair burdens for borrowers."[2] We commend ED for bringing to bear the experience it has now garnered in processing and reviewing borrower defense applications in designing a more equitable and streamlined process.

In particular, we are encouraged by ED's decision to reinstitute provisions that limit schools' use of binding predispute arbitration agreements and class action waivers; increase ED's ability to hold predatory schools financially accountable for the costs of their misconduct; and expand the bases for borrower relief. We are especially heartened that ED is proposing to allow borrowers to raise a school's aggressive and deceptive recruitment practices as a basis for a successful borrower defense claim. This additional basis addresses what State Attorneys General have long known—that predatory schools routinely recruit borrowers through deception and high-pressure sales tactics designed to manipulate borrowers. Time and again, our investigations of for-profit schools reveal that recruiters rely on aggressive recruitment, such as the creation of false time pressure, repeated contact, and the manipulation of borrowers' vulnerabilities to induce borrowers to enroll and take out student loans. ED's recognition of aggressive recruitment as a basis for relief reflects the reality of so many borrowers' experiences. Additionally, ED's proposal to eliminate onerous evidentiary requirements and employ a "presumption of reasonable reliance" in assessing borrower defense claims recognizes the undue burden placed on borrowers by ED's previous regulations.

ED's proposal to formalize a group discharge process is also critical to ensuring that borrowers have access to meaningful relief, with the added benefit of considerable efficiency gains for ED. We appreciate ED's recognition that states have an important role to play in the borrower defense process and that State Attorneys General "have been a significant and important source of evidence for many of ED's approvals of borrower defense claims."[3] We look forward to continuing to work with ED to make sure that borrowers obtain the assistance they need, and encourage ED to further streamline the process by which State Attorneys General can apply for and obtain relief for victimized borrowers.

Together, ED's proposed regulatory changes are essential to ensuring that students have access to critical relief and that students and taxpayers are no longer left holding the bag for predatory schools' misconduct. To further strengthen the proposed regulations' ability to fully protect borrowers and taxpayers, we encourage ED to adopt the following revisions prior to finalizing the regulations: (1) clarify that borrowers and states may raise a state law standard in their initial submissions; (2) clarify that judgments obtained by State Attorneys General form the basis for a borrower defense claim; (3) strengthen and clarify the presumption of full relief for borrowers with meritorious claims; and (4) ensure that borrowers with pending and undecided claims are not subjected to unnecessary financial harms.

---

[2] 87 Fed Reg. 41,879.
[3] 87 Fed Reg. 41,886.

a. Requiring Application for Reconsideration Under a State Law Standard Is Unnecessary and Unduly Burdensome

We applaud ED's recognition of state law as an important standard under which to consider and grant borrower defense applications. A state law standard has been a fundamental element of the borrower defense regulations almost throughout their entire existence.[4] Such a standard recognizes schools' obligations to comply with the laws of each state in which they operate, the multitude of well-known forms of misconduct by predatory schools which violate state law, and the long history of investigation and enforcement actions brought by our Offices against predatory schools violating those same state laws.[5] We commend ED's recognition of this vital component to the success of a borrower defense program.

Despite the inclusion of a state law standard, ED includes unnecessary steps for both group and individual applications to be considered under that same standard:

> ED official's written notice would be final, but if the borrower's claim is denied in full or in part, that individual borrower or, for a group claim, a State requestor, would be able to request reconsideration. Permissible bases for a reconsideration request would be limited to . . . a request by the borrower (for an individual claim)

---

[4] "Loans first disbursed prior to July 1, 2017, are addressed under the former 1994 borrower defense regulations in § 685.206(c). That section provides that a borrower may assert a defense to repayment under applicable State law." 87 Fed. Reg. 41,896.

[5] Including, for instance, Career Education Corporation (including the Sanford Brown schools), Assurance of Discontinuance, https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit; The Career Institute, LLC, Final Judgment, http://www.mass.gov/ago/docs/consumer/aci-consent-judgment.pdf; Corinthian Colleges, Inc., Judgment https://oag.ca.gov/system/files/attachments/press releases/Corinthian%20Final%20Judgment_1.pdf; DeVry University, Assurance of Discontinuance, https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution; Education Management Corporation, Consent Judgment, People of the State of Illinois v. Education Management Corporation *et al*., No. 2015 CH 16728 (Cir. Ct. Cook County Nov. 16, 2015); Lincoln Technical Institute, Inc., Consent Judgment, http://www.mass.gov/ago/docs/press/2015/lincoln-tech-settlement.pdf; ITT Educational Services, Inc., Complaint, Massachusetts v. ITT Educ. Servs. Inc., No. 16-0411 (Mass. Super. Ct. Mar. 31, 2016), borrower defense application, https://coag.gov/press-releases/4-1-21/; Kaplan Higher Education, LLC, Assurance of Discontinuance *available at* http://www.mass.gov/ago/docs/press/2015/kaplan-settlement.pdf; Minnesota School of Business, Inc. and Globe University, Inc., Findings of Fact, Conclusions of Law and Order, Minnesota v. Minnesota School of Business *et al.*, No. 27-CV-14-12558 (Minn. Dist. Ct. September 8, 2016); The Salter School, Judgment by Consent, http://www.mass.gov/ago/docs/press/2014/salter-judgment-by-consent.pdf; Westwood College, Inc., Complaint, People of the State of Illinois v. Westwood College, Inc. *et al.*, No. 12 CH 01587 (Cir. Ct. Cook County Jan. 18, 2012)

or a State requestor (for a group claim) for reconsideration under a State law standard.[6]

Based on our wealth of experience working with defrauded consumers and providing group discharge applications to ED on borrowers' behalf, we strongly urge ED to automatically consider individual and group borrower defense applications under a state law standard without requiring affirmative requests for reconsideration. As Under Secretary James Kvaal himself acknowledged, "borrowers should not have to jump through hoops to get the relief they deserve."[7] ED's proposed process requiring state law to be raised in a formal request for reconsideration creates wholly unnecessary hurdles for borrowers with meritorious claims. Automating this process would eliminate the "hoops" applicants have to go through to receive relief while still providing ED an efficient process for review.

i. Requiring Individuals to Re-Apply for Consideration Under a State Law Standard is Unnecessary

ED's proposed requirement that borrowers effectively re-apply to have their applications considered under a state law standard is unnecessary and unfair to borrowers. It is axiomatic that borrowers applying for relief are actually seeking relief, whatever the standard under which it is granted. The only potential result of such a proposal, then, is a drawn-out review process and the unjustified reduction of consumer relief. We agree with Secretary Cardona that, "if a borrower qualifies for student loan relief, it shouldn't take mountains of paperwork or a law degree to obtain it."[8] We strongly urge ED to adopt automatic review under a state law standard to better provide these borrowers the relief they deserve without creating unnecessary and unfair administrative hurdles.

Our Offices regularly work closely with consumers with overwhelming student loan debt. We routinely work with these consumers as they gather evidence to support their own borrower defense applications or to support our own investigations and group applications. We know firsthand how extraordinary a step it is for consumers to submit an application in the first place, as well as how difficult it can be for these borrowers to gather evidence and pursue relief given all the logistical and time burdens faced by borrowers, including work, family, and myriad other responsibilities.

Given this experience, we were disappointed to see that ED mistakenly believes that borrowers applying for loan relief will draw a distinction between the federal and state law standards. Borrowers are not legal scholars trained to analyze the differences between legal theories. They trust ED to analyze their circumstances under the appropriate standards and provide appropriate relief instead of shifting the burden back on the harmed borrower. Requiring

---

[6] 87 Fed. Reg. 41,906.

[7] *Education Department Releases Proposed Regulations to Expand and Improve Targeted Relief Programs*, Department of Education, July 6, 2022, https://www.ed.gov/news/press-releases/education-department-releases-proposed-regulations-expand-and-improve-targeted-relief-programs.

[8] *See Education Department Releases Proposed Regulations*, *supra* note 1.

these borrowers to essentially re-apply ignores the fundamental fact that *all* of these borrowers would want their applications considered under the state law standard if that might provide them relief.

Given the realities of consumers' lives, many borrowers will fail to re-apply purely because of logistical hurdles. Thus, requiring such borrowers to raise their hands *again* to receive relief under a state law standard creates only another roadblock to relief for borrowers who have already expressed their desire for relief. Depriving borrowers of relief when ED knows those borrowers would seek that relief is simply unfair and unreasonable.

ii. Requiring States to Submit an Additional Request for Consideration of Group Discharge Applications under a State Standard Is Unnecessary and Duplicative

Our Offices—tasked with enforcing state consumer protection laws—have submitted group discharge applications to ED related to predatory institutions that systematically defrauded borrowers across our states, and we have worked closely to provide additional evidence supporting state law violations alleged therein.[9] We truly appreciate ED's partnership in investigating and holding these schools accountable, and we applaud ED's recent granting of $5.8 billion in relief on a group basis to borrowers defrauded by Corinthian Colleges, Inc.[10] Given our extensive experience crafting these detailed group applications, however, we were surprised by the proposed regulation requiring states to submit an additional request to have their group discharge applications considered under a state law standard.[11]

ED's proposal ignores the reality that group applications submitted by our Offices expressly rely on state law. For instance, on April 1, 2021, a group of 25 states submitted a group discharge application on behalf of ITT student borrowers,[12] noting that ITT's conduct "violated our state consumer protection laws" and providing a 53-page analysis of how that conduct violated each submitting state's specific consumer protection laws.

Given such detailed applications, ED's proposal that states apply twice to have ED consider their applications under the appropriate standard is unnecessary. It wastes both the states' resources and ED's resources to require multiple submissions, rather than including all of the relevant facts and analysis in one submission for ED's consideration.

---

[9] *See, e.g.*, *Submissions by Attorneys General Seeking Relief for Constituents*, https://www.durbin.senate.gov/imo/media/doc/State%20AG%20spreadsheet.pdf (last accessed July 27, 2022) (listing group discharge applications by State Attorneys General).

[10] *Education Department Approves $5.8 Billion Group Discharge to Cancel all Remaining Loans for 560,000 Borrowers who Attended Corinthian*, Department of Education, June 1, 2022, https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges.

[11] 87 Fed. Reg. 41,906.

[12] *Application for Borrower Defense on Behalf of ITT Students*, Apr. 1, 2021, https://illinoisattorneygeneral.gov/pressroom/2021_04/2021_States_Group_BD_Application_ITT.pdf.

iii. Automatic Consideration of State Law Can Provide the Greater Efficiency Benefits than a Reconsideration Process

ED's stated rationale for requiring an application for reconsideration under a state law standard relies heavily on allowing ED to apply a federal standard first: "ED also believes the ability to move all claims under a single upfront Federal standard would provide very significant operational simplification and consistency in decision-making that would on net make the program easier to administer."[13] ED goes on to note that by reconsidering denials based on state law it is ensuring "that they are conducted only when there is a possibility that the State law standard could yield a better result for the borrower than the Federal standard."

However, ED would retain all of those benefits even if it automatically reviews denied claims under a state law standard without requiring an affirmative reconsideration request. ED can still review applications based on the federal standard first and only turn to the state law standard if the applications would be denied under the federal standard. Under this simplified process, ED would conduct this review only where there is a possibility that it would yield a better result. By making the review automatic, ED would also minimize the burdens on consumers and help ensure that borrowers who deserve relief actually receive it. Equitable considerations compel that this process be made automatic, and we call on ED to reconsider this unnecessary re-application process that would only create more hoops for borrowers and states to jump through.

b. A State Judgment Should Be a Basis for a Borrower Defense Claim

We commend ED's retention of the provision from the 2016 regulations that includes as a basis for a borrower defense claim "a Federal or State judgment or Departmental adverse action against an institution."[14] We strongly agree that a finding by a court that an institution engaged in misconduct can justify a borrower defense claim. Currently, however, the proposed rule describes this provision as applying only "if the borrower was personally affected by the judgment; that is, the borrower must have been a party to the case in which the judgment was entered, either individually or as a member of a class that obtained the judgment in a class action lawsuit, and the act or omission must have pertained to the making of a Direct Loan or the provision of educational services to the borrower."[15]

We urge ED to clarify that judgments obtained by State Attorneys General are also included, even though such actions are not class actions and the borrower would not be considered a party to the case. Indeed, under the 2016 regulations, ED "included a provision under which a judgment obtained by a governmental agency, such as a State AG . . . may also serve as a basis for a borrower defense[.]"[16] As ED previously recognized, in light of the considerable evidentiary requirements that such cases entail, State Attorneys General play a key role in bringing enforcement actions against predatory schools on behalf of our residents. For example, the State of California recently obtained a contested judgment against Zovio, Inc. and

[13] 87 Fed. Reg. 41,907.
[14] *Id.* at 41,888.
[15] *Id*. at 41,895.
[16] 81 Fed. Reg. 75,941.

Ashford University, LLC following a lengthy trial. The Court in that case made lengthy findings of fact documenting extensive misrepresentations to prospective students about critical topics such as cost of attendance and the ability to become a teacher with an Ashford degree, and ultimately ordered the defendants to pay over $22 million in civil penalties.

ED's rationale for approving a borrower defense claim due to a contested judgment in a class action applies just as forcefully to a judgment obtained by a State Attorney General like the one described above. Consistent with the 2016 regulations, we ask that ED clarify that it does not intend to exclude contested judgments obtained by State Attorneys General from serving as a basis for a borrower defense claim.

c. The Presumption of a Full Discharge Should be Clarified and Strengthened

We commend ED for adopting a presumption that a borrower with an approved borrower defense claim will be entitled to a full discharge.[17] Institutional misconduct that forms the basis for a borrower defense, whether under ED's proposed federal standard or under a state law standard, is sufficiently egregious that in many instances even a full discharge would not fully ameliorate the harms borne by borrowers. Defrauded borrowers often lose much more than the value of the Title IV loans they are induced to take out, incurring living expenses and childcare costs they would not have otherwise. Borrowers simultaneously suffer serious opportunity costs by spending time enrolled in a program they would not have chosen were it not for institutional deception, misrepresentations, and aggressive recruiting. Efforts to limit relief to borrowers with successful borrower defense claims fail to acknowledge these overwhelming costs.

Although ED has made an effort to delineate the contexts in which a borrower with a successful claim would not receive a full discharge, the actual language of the proposed regulations is not nearly as narrow as ED's preamble suggests. ED proposes to limit relief in circumstances where "approval of a borrower defense claim is based entirely on actions that did not involve promises by the institution about educational outcomes or the quality of educational services delivered."[18] Notwithstanding the examples offered by ED in the preamble, ED's proposed regulatory language is unnecessarily broad and could subsume a large range of misrepresentations and other misconduct that could induce a student to enroll in a school that they would otherwise not have chosen. The harms borne by students in this situation are difficult to quantify. In fact, ED acknowledges as much, proposing that where ED is unable "to calculate the value of [a student's] education" in these circumstances, the student will receive a discharge equal to 50 percent of the loan associated with the borrower defense claim.[19] This proposal fails to acknowledge the extent of the costs borne by borrowers wrongfully induced to take out loans and invalidates the myriad factors that students could reasonably find important in choosing where and whether to go to school, beyond educational outcomes or educational quality. Rather than artificially limiting relief in circumstances where ED is "not able to calculate the value of the education," we urge ED to extend the presumption of full relief in such circumstances.

---

[17] 87 Fed. Reg. 42,009.
[18] *Id.* at 41,908.
[19] *Id*. at 41,910.

If ED determines that there are limited circumstances in which full relief is not warranted, we caution ED to carve out those limited circumstances with precision. For example, ED has identified a concern that some claims based on a breach of contract may only relate to students being denied contractually guaranteed refunds for books and supplies.[20] Such narrow circumstances could be articulated in detail. Under the present proposal, the breadth and ambiguity of ED's exceptions risk subjecting future borrowers to inequitable treatment and improperly denied relief. Critically, this concern is far from hypothetical: ED's efforts under the prior administration to grant partial relief to cohorts of borrowers resulted in arbitrary outcomes that caused further harm and distress to victimized borrowers.[21] We urge ED to consider this history as a cautionary tale and endeavor to strengthen the presumption of full relief for those borrowers who were able to raise a successful borrower defense claim.

Additionally, it is critical that ED provide borrowers who receive partial relief with a detailed explanation both of the reason they were denied full relief and the manner in which their partial relief was calculated. Borrowers being denied full relief should have complete information to empower them to seek reconsideration of ED's partial relief calculation. We further ask that ED clarify the level of detail ED is required to provide to borrowers when notifying them of their relief amount.

d. Borrowers with Pending or Undecided Claims Should Not Be Disadvantaged

We share ED's concerns about the harmful effects of continued repayment obligations on borrowers with pending or undecided claims. As ED explained, allowing interest to accumulate on pending borrower defense claims can have "punitive consequences."[22] Borrowers with potentially valid borrower defense claims should not have to choose between submitting claims and ballooning debt. To that end, we encourage ED to eliminate its proposal to allow interest to accrue on individually submitted borrower defense claims for 180 days after the date of submission.

We disagree with ED's determination that a 180-day period of interest accrual would create "an incentive for borrowers to file strong claims."[23] There is no evidence to support the notion that, absent harmful incentives, borrowers have filed or will file frivolous borrower defense claims. Through years of experience assisting borrowers in seeking borrower defense relief, our Offices have found no such efforts at manipulation. Even under the improved process proposed by ED, applying for borrower defense claims requires initiative and work on the part of

[20] *Id.* at 41,908.
[21] *See*, *Rescission of Borrower Defense Partial Relief Methodology*, Office of the Under Secretary (Aug. 2021), https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2021-08-24/rescission-borrower-defense-partial-relief-methodology-ea-id-general-21-51.
[22] 87 Fed. Reg. 41,903.
[23] *Id.*

borrowers. We believe it is both unnecessary and harmful to impose potential financial consequences on borrowers in the name of preventing hypothetical frivolous claims.

Similarly, we appreciate ED's proposal to create mandatory decision deadlines for its consideration of borrower defense claims, and its recognition that ED's failure to timely consider borrowers' claims should result in the elimination of borrowers' repayment obligations. However, we are concerned that ED's proposal to render such loans "unenforceable" rather than to formally discharge the loans could result in borrowers facing negative credit consequences and limitations on their ability to take out additional federal student loans.[24] We ask that ED clarify its proposed regulations to ensure that borrowers do not bear the financial consequences of ED's inaction.

II. PUBLIC SERVICE LOAN FORGIVENESS

We applaud ED for undertaking rulemaking to create formal fixes to the problems that have plagued the administration of the PSLF program and harmed public servants across the country for over a decade. We are particularly pleased that ED has proposed to make certain aspects of the Limited PSLF Waiver permanent, such as expanding the definition of what constitutes a qualifying payment. We also commend ED's plan to create a formal reconsideration process. A clear, fair, and expedient avenue for redress is critical in light of the extensive student loan servicer misinformation around PSLF, coupled with high error rates and unwarranted denials. Further, the provision for loan forgiveness under PSLF without an application from the borrower when ED already has the information it needs is a positive step towards taking the onus off public servants so that they can focus on their critical work.

That being said, we want to emphasize the challenge of commenting on proposed changes to PSLF rules without also having the Income-Driven Repayment plan ("IDR") proposed rules on the table. PSLF and IDR are interrelated programs by design, and many of the PSLF program's problems to date are at root IDR problems. Indeed, the Massachusetts and New York Attorneys General litigation against PHEAA revealed how damaging servicing errors affecting the IDR program can be to borrowers' progress towards loan forgiveness under PSLF. For this reason, it is critical that ED recognize the inextricable connection between these programs in finalizing both sets of regulations and prioritize harmonizing IDR and PSLF. To this end, borrowers' participation in IDR and PSLF must be automated, simplified, and synchronized as much as possible. We urge ED to proceed with IDR rulemaking expeditiously, including creating lower cost IDR plans and automating the IDR recertification process.

In the interim, ED can do more to fully realize the promise of PSLF. The vital student loan relief Congress intended our teachers, nurses, and service members to receive has long been an empty promise, with denial rates as high as ninety-nine percent. Misinformation about program requirements, such as qualifying loan and repayment plan types, has been rampant. To right this history of wrongdoing, we urge ED to strengthen its PSLF rulemaking in several ways.

[24] *Id.* at 41,904.

a. Continue the PSLF Limited Waiver's Vital Work to Help FFEL Loan Holders

Historically, borrowers who did not have Direct loans would have to consolidate their loans into a Direct Consolidation Loan to be eligible for PSLF. However, under the prior rules, the borrower would only begin making their 10 years of qualifying payments after consolidation – even if the borrower had been employed in public service and making payments for years prior to consolidation. Given that unfairness, we thank ED for its commitment to addressing the problematic restarting of the PSLF payment count clock upon loan consolidation by counting payments made on Direct loans and Direct PLUS loans prior to consolidation into a Direct Consolidation loan. Consolidation rules have long been a barrier to forgiveness as borrowers have been subjected to misleading information on this point from servicers. We urge ED to include another constituent of public service borrowers that has been particularly harmed by misinformation and confusing consolidation rules—FFEL loan holders—in this important reform. As ED acknowledged in its creation of the Limited PSLF Waiver:

> Counting prior payments on additional types of loans will be particularly important for borrowers who have or had loans from the Federal Family Education Loan (FFEL) Program. Around 60 percent of borrowers who have certified employment for PSLF fall into this category. Many FFEL borrowers report receiving inaccurate information from their servicers about how to make progress toward PSLF, and a recent report by the Consumer Financial Protection Bureau (CFPB) revealed that some FFEL servicers have systematically misled borrowers on accessing PSLF. Counting payments made on FFEL loans toward PSLF will correct these issues and help address the effects of the COVID-19 pandemic on student loan borrowers.[25]

ED's sound reasoning for giving FFEL loan holders PSLF credit through the Limited PSLF Waiver applies with equal force here in the regulatory context. Though the Waiver will surely assist many FFEL loan holders who have been locked out of PSLF due to servicer misconduct, this remedy, as its name suggests, is necessarily limited. As currently devised, FFEL loan borrowers only have about a year to take the steps necessary to consolidate into a Direct loan and get credit for past payments.[26] This window is too small weighed against the decade and a half FFEL borrowers have been inappropriately shut out of relief. ED should make its promise to FFEL loan holders permanent by writing it into the PSLF regulations.

---

[25] *Fact Sheet: Public Service Loan Forgiveness (PSLF) Program Overhaul* (Oct. 6, 2021), https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul.

[26] On July 29, 2022, a group of 20 attorneys general wrote ED to encourage it to extend the Public Service Loan Forgiveness waiver. *See Urgent Need to Extend, Expand, and Harmonize the Limited Public Service Loan Forgiveness Waiver*, July 29, 2022, available at https://illinoisattorneygeneral.gov/pressroom/2022_07/2022729-Limited%20PSLF%20Waiver%20Multistate%20AG%20Letter%20Final.pdf.

b. Make Forbearances and Deferments that Count Toward PSLF Even More Inclusive

We are likewise pleased that the proposed rule makes periods during which borrowers are in various deferments and forbearances, such as economic hardship deferments, National Guard Duty forbearances, and cancer treatment deferments, PSLF-eligible. We hope that ED will consider creating an even more inclusive list of deferment and forbearance types that count towards PSLF. For instance, we urge ED to count periods of forbearance that are the result of the pervasive forbearance steering to which borrowers have long been subjected even when they actually qualify for a PSLF-eligible IDR plan.[27] In a similar vein, while counting periods during which borrowers are receiving cancer treatment is laudable, many other medical conditions may also compromise borrowers' ability to satisfy their loan obligations.

Borrowers improperly steered into forbearances are suffering an acute harm that only ED can fully and finally remedy. In the absence of a nationwide fix to forbearance steering, states are stepping in to do all we can to protect our low-income borrowers. For instance, dozens of State Attorneys General sued student loan servicer Navient for this practice, alleging that for over a decade Navient steered borrowers into forbearances because they were cheaper and easier to administer, rather than advising low-income borrowers of far more favorable options, such as IDR plans. These actions led to a $1.85 billion settlement.[28] And this is just the tip of the iceberg. As ED has acknowledged,[29] other servicers have committed similar abuses, and affected borrowers have suffered inflated loan amounts and a loss of PSLF credits, among other harms.

We welcome the steps ED has taken so far to address this problem, such as its plan to undertake account adjustments and other efforts to assist the most egregiously steered

---

[27] *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs* (Apr. 19, 2022), https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs ("FSA reviews suggest that loan servicers placed borrowers into forbearance in violation of Department rules, even when their monthly payment under an IDR plan could have been as low as zero dollars. These findings are consistent with concerns raised by the Consumer Financial Protection Bureau and state attorneys general. A borrower advised to choose an IDR plan instead of forbearance can get a reduced payment, stay in good standing, and make progress toward loan forgiveness. A borrower advised to choose forbearance – particularly long-term consecutive or serial uses of forbearance – can see their loan balance and monthly payments grow due to interest capitalization and lead to delinquency or default.").

[28] *See, e.g.*, *Attorney General Bonta Announces Multistate Settlement Against Student Loan Servicer Navient* (Jan. 13, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-multistate-settlement-against-student-loan.

[29] *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs* (Apr. 19, 2022), https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.

borrowers.[30] We are concerned, however, that such narrowly targeted remedies leave behind wide swathes of borrowers struggling to afford basic life necessities. Further, though we appreciate ED's intent to assist otherwise PSLF-eligible borrowers in non-qualifying forbearances and deferments under the "hold harmless" provision,[31] we are concerned that the current proposal does not redress borrower harm due to widespread forbearance steering practices, and would be both extremely burdensome for borrowers and administratively unwieldy. Indeed, it may be so burdensome as to be practically impossible for large numbers of low-income borrowers, the primary intended beneficiaries of this remedy, to benefit.

Under the hold harmless provision, borrowers with qualifying full-time employment who were in forbearances or deferments not covered elsewhere in PSLF rules may make retroactive payments for that period of time in order to receive credit for those months of qualifying service. In reality, it may be very difficult for borrowers, and servicers, to determine what their payments may have been 10-15 years ago, let alone make those payments as a lump sum on top of ongoing loan obligations. This is especially difficult for individuals currently in IDR plans, who are already making the highest payment they have been deemed capable of, and are unlikely to have additional funds to make up for payments they were unable to make in the past. To truly support these low-income public servants and avoid the high administrative burden of determining borrowers' incomes and payment histories going back over a decade, we urge ED to grant credit without retroactive payment required for all forms of forbearance and deferment. Should ED choose to move forward with the hold harmless provision, maximizing automation, including through data matching, would be an essential element in ensuring that borrowers have meaningful access to the intended relief.

c. Ensure that All Borrowers Who Serve Our Communities Can Access PSLF

We appreciate that ED proposes clarifying what constitutes a qualifying employer, an issue at the heart of PSLF.[32] However, we are concerned that ED is leaving out a cohort of workers who provide critical public services. For instance, as has been increasingly clear during the COVID-19 pandemic, individuals who work in the healthcare sector save lives, often at risk to their own. During the pandemic, essential healthcare workers left the safety of their homes to heal us. It is unjust that an arbitrary distinction—the status of their employers—should stand in

---

[30] *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs* (Apr. 19, 2022), https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs.

[31] Proposed at 685.219(g)(6). It appears there may be a drafting error in the proposed language of 685.219(g)(6), which currently reads ". . . the borrower may obtain credit toward forgiveness for those months, as defined in paragraph (d) of this section, for any months *in* which the borrower [makes an additional payment]" (emphasis added). This should instead read "for any months *for* which the borrower . . . ." The phrasing "in which" suggests that the payments are actually made during the forbearance/deferment months in question, which would preclude the retroactive payments that this provision contemplates.

[32] *See Who Is a Public Servant? Borrowers Have a Lot Riding on the Answer,* New York Times (Apr. 13, 2018), https://www.nytimes.com/2018/04/13/your-money/public-servant-loan-forgiveness.html.

the way of healthcare workers who work at private institutions accessing PSLF. They, along with substance abuse counselors, public health professionals, and others in the private sector, provide us with the same crucial services as their government and non-profit counterparts. Fortunately, there is no statutory requirement for this broad-brush line-drawing standing in ED's way. We urge ED to revise its proposed rules to recognize a fuller array of borrowers who serve our communities, regardless of employer designation, as satisfying qualifying work requirements.

Recognizing this disparity, ED requested feedback on a proposed change that would make doctors who provide services through a qualifying employer, but who may not be employed by that qualifying employer due to state law, eligible for PSLF. We strongly encourage ED to implement this change. In California and Texas, the two most populous states in the country, doctors who work at private nonprofit hospitals may not be employed directly by the hospital where they treat patients due to the so-called "corporate ban" on medicine in those states. Fairness requires that these doctors, currently excluded from PSLF due to particularities of state law, be able to participate in PSLF just like doctors working at similar hospitals in all 48 other states. As a bipartisan group of members of congress informed ED, this loophole has exacerbated doctor shortages in underserved areas in California and Texas.[33] Making the proposed adjustment would not be administratively onerous and would promote the purpose of PSLF to incentivize doctors with student debt to serve communities most in need of increased access to healthcare.

d. Further Expand PSLF Automation to Lessen the Burden on Public Servants

We support ED's proposal to grant automatic loan forgiveness under PSLF without an application from borrowers when ED has the necessary information and urge ED to apply such automation whenever possible. For instance, consistent with ED's commitment to provide automatic PSLF credit to service members and other federal employees by matching ED data with other federal data,[34] we urge ED to act quickly to do the same for state employees. Despite working for a clearly qualifying employer, staff in state agencies have been subject to the same red tape and runarounds as other public servants seeking PSLF. Such simplification is a win-win proposition, opening the long-shut PSLF door to public servants while lessening administrative burdens on borrowers, employers, servicers, and ED.

e. Strengthen the Reconsideration Process for Greater Accessibility and Efficiency

We strongly praise ED for proposing to create a formal PSLF reconsideration process. Reconsideration is essential to ensuring that public servants across the country who have suffered through a broken PSLF process for years receive appropriate credit for their payments. We hope that ED will clarify in its regulations, and in the resulting reconsideration process

[33] *Harder Announces Broad Bipartisan Coalition Working to Bring 10,000 Doctors to California* (Sept. 28, 2021), https://harder.house.gov/media/press-releases/harder-announces-broad-bipartisan-coalition-working-bring-10000-doctors.
[34] *Fact Sheet: Public Service Loan Forgiveness (PSLF) Program Overhaul* (Oct. 6, 2021), https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul.

materials, that reconsideration is available to all borrowers who have experienced PSLF errors, not just forgiveness denials. Given the amount of qualifying payments required, it is critical that borrowers have an avenue to correct errors in their payment counts and qualifying employer determinations every step of the way on this decade-long process. Leaving the untangling of PSLF account problems until the very end of the ten-year PSLF path would only complicate and compound errors.

We also ask ED to further strengthen the reconsideration process by making the request window longer than the currently proposed ninety days. To file a robust reconsideration request, many borrowers will need to access loan and PSLF records from servicers, and employment information from employers of years past. This is no small endeavor, particularly considering the difficulty borrowers have experienced getting loan and PSLF account information from servicers, including lengthy call hold times and receipt of inaccurate information. And if past is prologue, the current transition in PSLF servicer will make it even harder for borrowers to access their loan information for some time. Requiring borrowers to submit reconsideration requests before they have had sufficient time to put their best case forward would harm borrowers. It would also be costly and inefficient for ED, as pushing borrowers to file hasty requests is likely to lead to unwarranted denials and repeat reconsideration requests.

In implementing the new reconsideration process, we urge ED to make the process as borrower-friendly as possible, including by removing the onus from public servants, who often work long hours to serve our communities and support their families on limited incomes. Among other improvements, ED should automate reconsideration to the fullest extent feasible, as it has in its Limited PSLF Waiver review process: "the Department is committed to holding all student loan servicers to high standards of quality and accountability, and that includes PSLF servicing. Today, the Department is announcing that it will complete a review of all denied PSLF applications and PSLF processing practices to identify and address errors."[35] ED should likewise initiate reconsideration reviews to provide forgiveness and PSLF credits with the information it already has access to or can obtain on its own, rather than burdening public servants already struggling to carry their student loan burdens.

f. Provide Public Servants Urgently Needed Relief While They Wait for the Benefits of the New PSLF Regulations

We understand that it will take ED some time to finalize its proposed PSLF regulations. However, public service borrowers require relief in the meantime. According to ED, the Limited PSLF Waiver has already benefited nearly 130,000 borrowers, resulting in more than $7.3 billion in forgiveness.[36] While this is significant progress, many more deserving borrowers have not yet

[35] *Fact Sheet: Public Service Loan Forgiveness (PSLF) Program Overhaul* (Oct. 6, 2021), https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul.

[36] *U.S. Department of Education Leaders to Join New Jersey Governor Phil Murphy, Public Service Employees, Students to Discuss Public Service Loan Forgiveness* (May 20, 2022), https://www.ed.gov/news/media-advisories/us-department-education-leaders-join-new-jersey-

been able to access relief through the Waiver. Estimates suggest that 9 million public service workers with federal student loans are eligible to pursue debt cancellation through PSLF.[37] This gap is due to various factors, including Waiver administration delays, as well as the interplay between the Waiver and the student loan payment pause. Many borrowers likely will not try to access the Waiver until they are confronted with the crushing weight of their student loans again when the payment pause expires on August 31, 2022. This leaves only two months for many borrowers to take the steps necessary to benefit from the Waiver. ED should give borrowers more time to untangle their PSLF accounts via the Waiver, and provide a means of relief while the new PSLF regulations are pending, by extending the Waiver and related Income-Driven Repayment Adjustment[38] at least until the new PSLF and IDR regulations go into effect.

III. CLOSED SCHOOL DISCHARGE

The proposed regulations make great strides towards providing efficient and effective relief for students whose school closes before they can complete their degree. We applaud ED's broadening of the circumstances in which automatic discharges will occur, for example, by eliminating the need to consider whether students subsequently enrolled in a "comparable" program and how many transfer credits were recognized by such program, and by making automatic discharges available to students who start but do not complete teach-out programs. We also commend ED's decision to reduce the timeframe for a borrower to qualify for an automatic closed school discharge, from three years to one year after the school has closed. We describe three areas where the regulations can be strengthened.

a. Clarify that Automatic Closed School Discharges Are Mandatory

To improve clarity of the regulations and ensure that they effectuate ED's intent, we suggest that ED revise proposed § 674.33(g)(3) so that it states that the Secretary "*shall* discharge the borrower's obligations to repay an NDSL or Federal Perkins Loan," rather than "*may* discharge." Similarly, proposed § 682.402(d)(8) should be revised to state that a borrower's "obligation to repay a FFEL Program loan *shall* be discharged without an application from the borrower," rather than "*may* be discharged."

ED has already made clear that its proposed regulatory scheme for closed school discharges is intended to effectuate relief for eligible students without putting the onus on

---

governor-phil-murphy-public-service-employees-students-discuss-public-service-loan-forgiveness.

[37] *New Analysis: More Than 9 Million Public Service Workers with Federal Student Loans Eligible to Pursue Debt Cancellation, Fewer Than 2 Percent Have Received Relief, and Only 15 Percent on Track* (June 9, 2022), https://protectborrowers.org/new-analysis-more-than-9-million-public-service-workers-with-federal-student-loans-eligible-for-debt-cancellation-fewer-than-2-percent-have-received-relief-and-only-15-percent-on-track/.

[38] *Income-Driven Repayment and Public Service Loan Forgiveness Program Account Adjustment* (Apr. 19, 2022), https://studentaid.gov/announcements-events/idr-account-adjustment. (Income-Driven Repayment plans are a core type of PSLF-qualifying repayment plan.)

students to apply or await individualized adjudications. As ED has stated, it aims to "to increase access to closed school discharges for borrowers who have experienced the disruption of being enrolled in a school that closes, and who are burdened by student loan debt for an educational program that they were unable to complete through no fault of their own."[39] ED has also recognized data showing that "without an automatic discharge option, only a small percentage of eligible borrowers ever obtain relief through a closed school discharge."[40] It would contravene ED's intentions if a Secretary, or potentially a school, were to take the position that the Secretary is not required to effectuate automatic discharges in the scenarios described in proposed sections 674.33(g)(3) and 682.402(d)(8).[41] Changing the regulatory text to "shall" would avoid any risk of ambiguity.

During negotiations, ED already stated that the current drafting with "may" rather than "shall" was not intended to "make any difference," and was a matter of needing to "clean up that language and make the technical changes that we want to make to make it clearer and more precise."[42] ED should make these clarifications now.

b. Require the Secretary to Extend the 180-Day Look-Back Window Where There Are Exceptional Circumstances

We also urge ED to give more impact to the "exceptional circumstances" by creating a presumption that such circumstances extend the 180-day look-back window.[43] Currently, the proposed regulations provide that the Secretary "*may* extend" the 180-day window prior to a school's closing, within which a student must have withdrawn in order to qualify for a closed school discharge.[44] Our Offices' experience has shown that the list of exceptional circumstances are not merely theoretical, but have in fact frequently precipitated school closures that have harmed students.[45] Therefore, we believe that any of the exceptional circumstances should result

---

[39] 87 Fed. Reg. 41,921.
[40] *Id*.
[41] *Compare with, e.g.*, proposed § 674.61(d)(1) (providing that the secretary "will discharge" Perkins loans of students eligible due to service-connected disabilities) and § 682.402(c)(9) (same for FFEL loans).
[42] NegReg Tr. at 18-19 (Dec. 6, 2021, afternoon session), https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/dec6pm.pdf.
[43] 87 Fed. Reg. 41,980.
[44] *Id*. (emphasis added).
[45] Illinois Institute of Art, *see Attorney General Raoul Announces Department of Education Will Discharge at Least $10 Million in Federal Student Loans*, Nov. 13, 2019, https://illinoisattorneygeneral.gov/pressroom/2019_11/20191113b.html ("In particular, the Illinois Institute of Art and Art Institute of Colorado misrepresented to students for six months that the schools were still accredited when they had lost accreditation."); ITT, *see Extended Closed School Discharge will Provide 115K Borrowers from ITT Technical Institute more than $1.1B in Loan Forgiveness*, Aug. 26, 2021, https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness (expanding closed school discharge relief back 8 years to borrowers enrolled during

in a *presumption* that the 180-day look-back period be expanded to the date the circumstance occurred, subject to the Secretary's written determination to the contrary.

c. Clarify that a School's Communication with Students Can Serve as a Closure Date

Finally, the proposed regulations do not allow for a school's communications to students that it will close to serve either as the date of closure, or at least one of the exceptional circumstances that can result in an extension of the look-back period. In our experience, such communications often precede a school's actual closing by many months and can trigger students to withdraw quickly in order to avoid spending additional time and money at an institution that they reasonably fear will go defunct. As negotiators have noted, schools can "manipulate the date of closure, rendering borrowers ineligible" even while they have made students long aware that they are headed toward a shutdown.[46] Allowing a school's communication to students that it will close to serve as a date of closure, or at least to extend the lookback period, is necessary to protect students and avoid manipulation by schools.

* * *

Notwithstanding our recommendations for further regulatory improvements, we believe ED's proposed regulations will dramatically improve the lives of borrowers while restoring institutional accountability. Under ED's proposed regulations, borrowers who have been victimized by their schools will be able to obtain critical relief, predatory schools will bear the consequences of their misconduct, and public servants will finally have a clearer path to loan forgiveness. We appreciate the care with which ED has undertaken this essential rulemaking process and look forward to working as partners to support and protect borrowers.

Sincerely,

Maura Healey
Massachusetts Attorney General

Rob Bonta
California Attorney General

Kwame Raoul
Illinois Attorney General

Philip J. Weiser
Colorado Attorney General

a period when ITT "engaged in widespread misrepresentations about the true state of its financial health and misled students").

[46] 87 Fed. Reg. 41,923.

William Tong
Connecticut Attorney General

Kathleen Jennings
Delaware Attorney General

Karl A. Racine
District of Columbia Attorney General

Stephen H. Levins
Executive Director, Hawaii Office of Consumer Protection

Dana Nessel
Michigan Attorney General

Keith Ellison
Minnesota Attorney General

Aaron D. Ford
Nevada Attorney General

Matthew J. Platkin
Acting Attorney General of New Jersey

Hector Balderas
New Mexico Attorney General

Letitia James
New York Attorney General

Josh Stein
North Carolina Attorney General

Ellen F. Rosenblum
Oregon Attorney General

Peter Neronha
Rhode Island Attorney General

Susanne R. Young
Vermont Attorney General

Bob Ferguson
Washington State Attorney General

Joshua L. Kaul
Wisconsin Attorney General