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August 4, 2022

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

The Honorable Miguel Cardona  
United States Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear President Biden and Secretary Cardona,

We, the undersigned student loan ombudspersons and advocates from Massachusetts, California, Colorado, the District of Columbia, Illinois, Nevada, Oregon, and Washington commend your administration's historic efforts to remedy longstanding failures of the federal student loan repayment system. Our offices interact with borrowers and servicers every day. We have seen firsthand how difficult it is for borrowers to navigate the complex web of repayment and forgiveness programs, the effects of poor servicing, and the devastating toll that the failed repayment system has taken on borrowers' lives.

In the last year, your administration announced several remedial programs, including the Limited Public Service Loan Forgiveness Waiver ("PSLF Waiver") and the One-Time Income-Driven Repayment and Public Service Loan Forgiveness Adjustment ("One-Time Adjustment"), which are intended to address the inability of borrowers to access vital programs like Public Service Loan Forgiveness ("PSLF") and income-driven repayment ("IDR"). While some borrowers will receive forgiveness of their entire loan balance through these remedial programs, most will receive credit for qualifying months toward forgiveness, and will therefore need to engage with the repayment system to work toward forgiveness after the federal portfolio resumes repayment. Additionally, borrowers with certain federal loan types, such as loans made under the Federal Family Education Loan ("FFEL") Program, risk missing out entirely on remedial benefits if they do not take specific actions within the coming months.

The payment pause and your administration's remedial programs have created a once-in-a-lifetime opportunity to return borrowers to an improved repayment landscape with an affordable path out of student loan debt. However, this opportunity will be squandered if borrowers are rushed back into repayment amidst the chaos of ongoing adjustments and rule changes, and if



they are offered insufficient windows in which they must take specific actions or forever miss out on key benefits.

To ensure your administration's historic efforts succeed, we believe you must extend the PSLF Waiver, expand both the PSLF Waiver and One-Time Adjustment to avoid excluding the most distressed borrowers, synchronize the waiver and adjustment, provide more information to borrowers and advocates, and postpone the return to repayment until both backward and forward-looking improvements have been fully implemented. We also think it is important to grandfather the benefits afforded by the PSLF Waiver and One-Time Adjustment, so that they remain available to the millions of borrowers who will inevitably miss administrative deadlines.

## **I. The Limited PSLF Waiver Must Be Extended**

The PSLF Program forgives the remaining balance on federal Direct Loans after borrowers have made 120 qualifying payments while working full-time for a qualifying employer. Due to the Program's complexity and poor administration, millions of public service workers have been unable to access loan forgiveness. In October 2021, your administration announced a temporary, but significant waiver to traditional PSLF rules, known as the PSLF Waiver, allowing borrowers to get credit toward forgiveness for past repayment periods that would not otherwise qualify. However, to benefit, borrowers must take specific actions by October 31, 2022, including consolidating into the Direct Loan Program and filing employment certifications.

The current plan to end the PSLF Waiver on October 31, 2022, just two months after the federal portfolio resumes repayment and amidst a changing regulatory and servicing environment, is ill advised. The PSLF Program's fundamental problems will immediately return in an exacerbated form upon the waiver's end. We must set up PSLF borrowers to succeed by returning them to an improved PSLF landscape that both borrowers and servicers can realistically navigate. Confusion and harm will result from reimposing the failed traditional PSLF rules on November 1, 2022, only to change those rules again when new PSLF regulations take effect in 2023. Subjecting borrowers and servicers to repeated PSLF rule changes over a short period will undermine the cohesion of the PSLF Program and impede borrowers' ability to pursue forgiveness.

Additionally, many borrowers will not consider the PSLF Waiver until they return to repayment and must again grapple with their loans. Ending the waiver on October 31, 2022 provides only two months for borrowers to take critical steps. During this period, PSLF borrowers will also be confronted with the transfer of servicing to the Missouri Higher Education Loan Authority ("MOHELA"), the newly appointed PSLF servicer. MOHELA's ability to service PSLF borrowers and the complex PSLF Program is largely untested. However, borrowers have already reported website outages and difficulties creating accounts. Additionally, many PSLF borrowers have contacted their local student ombudsperson or advocate confused about whether MOHELA is a scam.

For the PSLF Waiver to succeed, we believe additional time is needed to educate borrowers. Many borrowers who contact us are unaware of or confused by the waiver and the steps they must take to access its benefits. This is particularly true for borrowers with loans made under the FFEL Program, who risk losing out entirely on waiver benefits if they do not consolidate by

October 31, 2022. Although many of our offices are engaged in affirmative education, one-on-one direct assistance, and outreach campaigns concerning the waiver, more time is needed given the staggering number of borrowers who must be reached and counseled. Data reported by Federal Student Aid show a dramatic increase in the number of PSLF Forms submitted beginning in March 2022, which means that the PSLF Waiver is just starting to gain momentum.<sup>1</sup>

An extension is also necessary for the U.S. Department of Education (“Department”) to complete the important work it has begun with states and other government employers to implement the bulk employment certification processes that were announced in conjunction with the PSLF Waiver—including for service members and federal employees.<sup>2</sup> If implemented during the waiver, bulk employment certifications offer the opportunity to help thousands of deserving public servants who will otherwise be effectively locked out of PSLF.

For these reasons, we strongly recommend extending the PSLF Waiver until the new PSLF regulations take effect in 2023.

## **II. The PSLF Waiver and One-Time Adjustment Must be Expanded to Include the Most Distressed Borrowers**

IDR plans enable borrowers to make payments based on their income and family size and offer the possibility of loan forgiveness after 20 or 25 years. Servicers have historically failed to counsel and appropriately communicate with borrowers about IDR, often steering distressed borrowers into forbearance instead. Even when borrowers do manage to enroll, they often have difficulty keeping their lower payments due to paperwork requirements and poor servicer communications. There have also been problems counting qualifying payments. To address these issues, in April 2022, your administration announced the One-Time Adjustment, which provides credit for many repayment periods that would not otherwise count toward forgiveness under IDR Plans and PSLF.<sup>3</sup> However, we are concerned that certain repayment statuses and loan types have been excepted from both the One-Time Adjustment and PSLF Waiver, resulting in the most distressed borrowers being excluded from relief.

### **a) Default Periods Should Count Toward Forgiveness**

Time spent in default does not count toward forgiveness under either the PSLF Waiver or One-Time Adjustment. Yet default often results from forbearance steering and other servicer misconduct. Many, if not most of the defaulted borrowers with whom we work were not properly counseled on how to enroll in IDR plans to lower their monthly payments or were actively steered away from those options and into forbearance instead. During forbearance, interest accrues and capitalizes, resulting in ballooning loan balances. Once borrowers run out of forbearance time, their large balances make repayment even more unaffordable and trap them in

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<sup>1</sup> <https://protectborrowers.org/the-pslf-waiver-has-been-a-huge-success-and-it-may-be-just-hitting-its-stride-why-end-it/>

<sup>2</sup> <https://web.archive.org/web/20211006102232/https://www.ed.gov/news/press-releases/fact-sheet-public-service-loan-forgiveness-pslf-program-overhaul>

<sup>3</sup> Borrowers with commercially-held FFELs risk losing out on the One-Time Adjustment if they do not consolidate into the Direct Loan Program.

debt they can never repay. Were it not for servicing misconduct, many defaulted borrowers would have been on affordable repayment plans—some as low as zero dollars per month. In fact, in 2015, the Government Accountability Office reported that 70 percent of borrowers in default had incomes that would entitle them to a reduced monthly payment under IDR.<sup>4</sup>

Excluding time in default fails to recognize the role that servicers have played in driving borrowers into default and unjustly penalizes the most distressed borrowers. If the intent of the One-Time Adjustment and PSLF Waiver is to correct past harms to borrowers, these programs should credit periods of default toward forgiveness. We strongly recommend reconsideration of this regressive policy.

#### **b) Bankruptcy Forbearance Periods Should Count Toward Forgiveness**

Debtors in Chapter 13 plans are by definition financially distressed but continue to make student loan payments during bankruptcy. Even though borrowers are making payments, time in bankruptcy is considered “bankruptcy forbearance” and has seemingly been excluded from the PSLF Waiver and One-Time Adjustment. We feel this policy is unreasonable and should be reconsidered.

#### **c) Short-Term Forbearances Should Automatically Count Toward Forgiveness**

Both the PSLF Waiver and One-Time Adjustment automatically count certain long term forbearance periods but require borrowers to file complaints to have shorter forbearance periods reviewed. This policy fails to recognize that forbearance steering and servicing errors often result in short-term forbearances. In our experience, borrowers have been frequently and repeatedly pushed into short-term forbearances by loan servicers, resulting in missed opportunities to make qualifying payments toward loan forgiveness.

For example, borrowers have been placed in short term forbearance when they fail to recertify on-time for IDR plans due to faulty servicer communications, when consolidating their loans, when changing IDR plans, when servicers delay in processing their IDR applications, or when servicers fail to promptly communicate about IDR recertification deficiencies.

It is unfair to require borrowers who have been placed in short-term forbearances to seek account reviews by filing complaints with the Federal Student Aid Ombudsman. In our experience, borrowers who are most likely to experience forbearance steering are often the least likely to recognize its occurrence. We hope this policy will be reconsidered.

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<sup>4</sup> U.S. Government Accountability Office, GAO-15-663, *Federal Student Loans: Education could do more to help ensure borrowers are aware of repayment and forgiveness options* (Aug. 2015), <http://www.gao.gov/products/GAO-15-663> (finding that millions of borrowers who had fallen into default had been eligible for an IDR plan).

#### **d) Parent PLUS Loans Should be Fully Included in the PSLF Waiver**

Parent PLUS Loans are excluded from the PSLF Waiver. However, Parent PLUS borrowers are among the most distressed borrowers we encounter, as they tend to have the largest balances and the fewest repayment options.<sup>5</sup> Many also face declining incomes and health issues.

Often, we find that Parent PLUS borrowers have been victims of servicing misconduct and have not been informed that they must obtain a Direct Consolidation Loan to access IDR and PSLF. We are sorely disappointed by the exclusion of many Parent PLUS borrowers from the PSLF Waiver and do not understand the legal or policy basis for their exclusion. Particularly given that Parent PLUS Loans can receive PSLF Waiver credits if the parent can consolidate their own student loans with their Parent PLUS Loans, the exclusion of Parent PLUS borrowers who did not borrow for their own education seems arbitrary at best. We urge you to change this policy.

#### **e) FFEL Joint Consolidation Borrowers Should Get Access to the Limited Waiver and IDR Adjustment**

While it affects a smaller number of borrowers, we are also concerned that the waiver and adjustment are not available to borrowers who took out Joint Consolidation Loans with their spouses through the FFEL Program. We routinely encounter problematic situations involving Joint Consolidation Loans, particularly in cases of divorce or allegations of abuse. Borrowers with FFEL Joint Consolidation Loans deserve equal access to debt relief and we hope serious consideration will be given to creating a path for their participation.

### **III. The PSLF Waiver and One-Time Adjustment Must be Harmonized**

Although the PSLF Waiver and One-Time Adjustment are complementary in some ways, in other ways, the two programs are misaligned. While the programs offer differing deadlines for consolidation, the consequences of consolidation after the PSLF Waiver's end and before the One-Time Adjustment could be catastrophic for PSLF borrowers. PSLF borrowers who consolidate after the PSLF Waiver's end will lose credit for past qualifying employment periods. These differing and high-stakes deadlines create a confusing and dangerous environment for borrowers and servicers alike.

Additionally, while it appears that the One-Time Adjustment will provide certain borrowers with eligible months toward PSLF, it may simultaneously leave those borrowers without a path to forgiveness. For example, borrowers, including retirees, who no longer work in public service but receive more than 120 eligible months toward PSLF through the One-Time Adjustment, will not be able to receive forgiveness due to the prior expiration of the PSLF Waiver. Furthermore, PSLF borrowers and servicers are likely to be confused about whether payments must resume under traditional PSLF rules at the end of the waiver in October 2022 or after the expected completion of the One-Time Adjustment in January 2023.

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<sup>5</sup> The only IDR plan for which Parent PLUS Loans are eligible is the Income-Contingent Repayment (ICR) plan, but to access ICR, Parent PLUS Loans must first be consolidated into a Direct Consolidation Loan.

We urge your administration to exercise its authority to synchronize the One-Time Adjustment and PSLF Waiver into a unified policy. One simple way of doing so may be to incorporate certain critical aspects of the PSLF Waiver into the One-Time Adjustment, including (1) waiving the requirement for qualifying employment at the time of PSLF forgiveness and (2) preventing consolidations (whether of FFEL or Direct Loans) occurring prior to the completion of the One-Time Adjustment from negating past qualifying employment periods for PSLF. We would then recommend extending the deadline for the One-Time Adjustment until after new IDR and PSLF regulations take effect.

#### **IV. More Information and Outreach is Needed Concerning the One-Time Adjustment**

The One-Time Adjustment has not been well explained or publicized. More than two months after the adjustment's announcement, no further information has been communicated to borrowers or advocates—including, critically, the deadline by which commercial FFEL borrowers must consolidate into the Direct Loan Program. Very few of the borrowers who contact us have heard of the One-Time Adjustment or know anything about it.

Since it is difficult for borrowers to identify their federal loan types—let alone whether their FFEL is owned by the Department or a commercial lender, we are very concerned that borrowers with commercially-held FFELs have not been contacted by the Department or their servicers to warn of the dire need to consolidate to qualify for the One-Time Adjustment.

Additionally, the relationship between the One-Time Adjustment and the PSLF Waiver has not been well explained. Without clear information about the details of these programs, we are unable to effectively counsel borrowers and provide them with critical advice on managing their loans. The lack of information also creates ripe conditions for student loan debt relief scams.

We urge your administration to promote and clarify the One-Time Adjustment, including providing guidance to commercial FFEL servicers and conducting outreach to commercial FFEL borrowers concerning the need to consolidate.

#### **V. The Return to Repayment Should Be Postponed Until Backward and Forward-Looking Improvements are Implemented**

The federal loan portfolio is scheduled to resume repayment on September 1, 2022, just two months before the PSLF Waiver expires and before implementation of the One-Time Adjustment, which the Department does not expect to complete before 2023. Additionally, while payments have been paused, large swaths of the federal portfolio have been subject to major servicing transfers, creating upheavals for borrowers, servicers, and the Department.

The payment pause and your administration's remedial programs have created a unique opportunity to return borrowers to an improved repayment system and to deliver on the promise of an affordable path out of student loan debt. However, we are concerned that this opportunity will be squandered if borrowers are rushed back into repayment amidst the implementation of backward-looking remedies and forward-looking improvements. Such an environment will be

chaotic for borrowers and servicers and will inject additional complications into a system in desperate need of simplification.

For example, since the One-Time Adjustment will grant IDR credit to many borrowers who have never previously enrolled in IDR, we believe it is critical that borrowers come back into repayment with clear information about how many payments they have been granted toward IDR forgiveness. Without this information, borrowers can't make informed choices and are unlikely to enroll in IDR and continue earning credit toward forgiveness. And as previously mentioned, the PSLF Program could be irrevocably undermined by reimposing the failed traditional PSLF rules on November 1, 2022, only to change those rules again when new PSLF regulations take effect in 2023.

We urge you to take the time that is necessary to truly address the broken federal loan repayment system, and to postpone the return to repayment until forthcoming PSLF and IDR regulations take effect.

#### **VI. The PSLF Waiver and One-Time Adjustment Benefits Should be Grandfathered**

Finally, we believe the benefits afforded by the PSLF Waiver and One-Time Adjustment should be grandfathered and made retroactively available to borrowers who consolidate into the Direct Loan Program or submit employment certifications after the waiver and/or adjustment's ultimate expiration. It is simply unfair to require borrowers to make another decade or two of payments just because they failed to consolidate or file employment certifications by arbitrary administrative deadlines.

#### **VII. Conclusion**

We applaud your administration's efforts to extend credit for past periods of time in which borrowers were improperly denied opportunities to make progress toward loan forgiveness, and to position borrowers to access an affordable path out of student loan debt. However, like state Attorneys General and student loan advocacy organizations, we believe additional action is needed to ensure your efforts succeed.

Thank you for your consideration. We value your partnership and welcome the opportunity to discuss these issues and solutions with you further.

Sincerely,



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