



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

September 24, 2021

***Via Federal eRulemaking Portal***

Office of the Under Secretary  
U.S. Department of Education  
400 Maryland Avenue SW, Room 7E307  
Washington, DC 20202

Re: Comment in Response to Request for Information Regarding the Public Service Loan Forgiveness Program (Docket ID ED-2021-OUS-0082)

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this comment in response to the Department of Education’s request for “information, research, and suggestions regarding the administration of the Public Service Loan Forgiveness (“PSLF”) program” (“RFI”).<sup>1</sup> With respect to RFI question numbers 4, 6, 7, 11, 12, and 13, CREW urges the Department to carefully consider how widespread recordkeeping failures by the federal government and its contractors, potentially in violation of the Federal Records Act (“FRA”), have harmed borrowers seeking PSLF. The Department should take every opportunity to remediate borrowers affected by these errors, including by crediting qualifying payments that the Department and its contractors failed to properly document.

The PSLF program was created to help build a “highly educated public service workforce to serve as teachers, nurses, physicians, servicemembers in our military, social workers, legal aid attorneys, and first responders” amid “concerns about workforce shortages and rising student debt burdens.”<sup>2</sup> To encourage entering public service, the program “offers loan cancellation for Federal student loan borrowers who make 120 qualifying payments made while engaging in eligible public service work.”<sup>3</sup>

Because PSLF requires proof of 120 qualifying payments, complete and accurate records of borrower account balances and payment histories are essential, and borrowers rely on the Department and its loan servicers to maintain such records. Yet investigations of the PSLF program by the Student Borrower Protection Center (“SBPC”) and the American Federation of Teachers (“AFT”) have revealed “a chaotic, disorganized program without critical recordkeeping or management processes in place.”<sup>4</sup> One report from October 2020

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<sup>1</sup> Request for Information Regarding the Public Service Loan Forgiveness Program, 86 Fed. Reg. 40,029 (July 26, 2021), <https://www.federalregister.gov/documents/2021/07/26/2021-15831/request-for-information-regarding-the-public-service-loan-forgiveness-program>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Press Release, [AFT and SBPC Uncover New Evidence of Mismanagement and Abuse in Scandal-Plagued Public Service Loan Forgiveness Program](https://protectborrowers.org/aft-and-sbpc-ecf-pslf/), Student Borrower Protection Center, Aug. 12, 2020, <https://protectborrowers.org/aft-and-sbpc-ecf-pslf/>.

found that accounts transferred from Affiliated Computer Services (“ACS”)—the exclusive servicer of the federal Direct Loan program between 1992 and 2009—had “missing or incorrect account information that jeopardized at least 29,000 borrowers’ progress toward PSLF and [Income-Driven Repayment] loan forgiveness.”<sup>5</sup> Borrowers’ payments frequently “went unrecorded, were mis-recorded, or were applied in the wrong amount or to the wrong borrower account.”<sup>6</sup> As a result, “borrowers who had planned their financial lives around student loan forgiveness were left to piece together years of payment history to prove their progress toward loan forgiveness, which should have been preserved by ACS.”<sup>7</sup> These “errors create particular concern for borrowers with loans that were subsequently transferred to another servicer,” as it leaves them “vulnerable to improper PSLF delays and denials driven by . . . past errors by ACS.”<sup>8</sup>

Compounding the problem, the SBPC and AFT found that there are currently “no student loan record retention requirements under federal law.”<sup>9</sup> Due to the “lack of record retention requirements in the federal loan system, it is likely that there are no [federal] records available to reconcile” accounts affected by ACS’s servicing errors.<sup>10</sup> And borrowers may be unable to retrieve complete payment histories from their own banks, since commercial banks often retain account records for no longer than seven years, sometimes less.<sup>11</sup>

These reports raise serious questions about the Department’s compliance with the FRA and its implementing regulations. Under the FRA, agencies “shall make and preserve records containing adequate and proper documentation . . . designed to furnish the information necessary to protect the legal and financial rights . . . of persons directly affected by the agency’s activities.”<sup>12</sup> Examples of “[l]egal and financial rights records” that are deemed “essential” under the FRA include “accounts receivable records, social security records, payroll records, retirement records, and insurance records.”<sup>13</sup> The FRA further requires agencies to “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency” that must include, among other things, “effective controls over the creation and over the maintenance and use of records in the conduct of current business.”<sup>14</sup> The Department has issued a directive implementing the FRA’s records management requirements, which applies to all agency “employees and contractors who have a network account or who otherwise create or receive records as an agent of” the Department.<sup>15</sup> The FRA’s requirements are likewise

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<sup>5</sup> Student Borrower Protection Center and American Federation of Teachers, *Broken Promises: The Untold Failures of ACS Servicing*, at 15, Oct. 2020, [https://protectborrowers.org/wp-content/uploads/2020/12/Broken-Promises-ACS-12\\_9.pdf](https://protectborrowers.org/wp-content/uploads/2020/12/Broken-Promises-ACS-12_9.pdf).

<sup>6</sup> *Id.* at 17.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 18.

<sup>9</sup> *Id.* at 21.

<sup>10</sup> *Id.* at 20-21.

<sup>11</sup> Stephen Pedneault, *Need access to historical banking information? Better read the fine print*, *Fraud Magazine*, Sept. 2014, <https://www.fraud-magazine.com/article.aspx?id=4294985046>.

<sup>12</sup> 44 U.S.C. § 3101.

<sup>13</sup> 36 C.F.R. § 1223.2.

<sup>14</sup> 44 U.S.C. § 3102.

<sup>15</sup> Dep’t of Education, Departmental Directive OM 61-0, at 11, Apr. 14, 2017,

<https://www2.ed.gov/policy/gen/leg/foia/acsom6103.pdf>; see also *id.* at 20 (“All Department employees and contractors shall . . . [c]reate and maintain adequate and proper documentation (Federal records) for the work

incorporated in regulations governing federal contractor records,<sup>16</sup> and in the Department's loan servicer contracts.<sup>17</sup>

Federal student loan account records—including those reflecting borrower payment histories—are precisely the type of “legal and financial rights records” that the FRA deems “essential.” Indeed, borrowers seeking PSLF routinely rely on these records to prove entitlement to hundreds of thousands of dollars in financial relief. It appears, however, that the Department has failed to adopt “effective controls” to ensure student loan account records are properly created and preserved as required by the FRA and implementing regulations, to the detriment of millions of PSLF-seeking borrowers.

As the Department considers how to improve the PSLF program going forward, it should prioritize adopting robust recordkeeping requirements in accordance with the FRA and other applicable laws, and it should strictly police loan servicers' compliance with those requirements. The Department should also take every opportunity—both through regulatory and non-regulatory processes—to appropriately remediate harmed borrowers, including by crediting qualifying payments that the Department and its contractors failed to properly document. Student loan borrowers should not be penalized for errors made by the government and its contractors.

Thank you for considering these comments. If you have any questions or require additional information, please contact Nikhel Sus at [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org).

Sincerely,

Citizens for Responsibility and Ethics in Washington

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for which they are responsible; maintain records in a manner that facilitates access and retrieval regardless of format; destroy records only in accordance with approved records retention and disposition schedules; and remove non-record materials from [the Department] only after obtaining prior authorization.”).

<sup>16</sup> See 36 C.F.R. § 1222.32(a)(1) (“Agencies must ensure that contractors performing Federal government agency functions create and maintain records that document these activities.”); *id.* § 1222.32(a)(2) (“Records management oversight of contract records is necessary to ensure that all recordkeeping needs are met. All records created for Government use and delivered to, or under the legal control of, the Government must be managed in accordance with Federal law.”); *id.* § 1222.32(b) (“All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to” the FRA and other statutes).

<sup>17</sup> See, e.g., Pennsylvania Higher Education Assistance Agency, Title IV Additional Servicing Contract, June 17, 2009, Attachment A-2, § 80, <https://www2.ed.gov/policy/gen/leg/foia/contract/pheaa-061709.pdf> (“Records Management”).