



STUDENT BORROWER
PROTECTION CENTER



BROKEN PROMISES

Employer Certification ~~Form~~ **Failure**

August 2020

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Executive Summary

- The Public Service Loan Forgiveness Program was created by Congress in 2007 to provide public service workers with student loan debt relief in exchange for a decade of service in their communities. Unfortunately, since its inception, the program has been mishandled and undermined by the Department of Education and its contracted loan servicers. According to the Department of Education, the Public Service Loan Forgiveness program continues to have a nearly 99 percent denial rate.
- In December 2018, the American Federation of Teachers (AFT) and the Student Borrower Protection Center (SBPC) launched a top-to-bottom investigation of Public Service Loan Forgiveness (PSLF), issuing dozens of requests under federal and state open records laws for documents and records related to the widespread government mismanagement and industry abuses that have caused public service workers to forfeit their rights under this critical protection. As part of this investigation, AFT and SBPC scrutinized the policies and practices surrounding the process for approving “public service organizations” as qualifying employers.
- To receive loan forgiveness through PSLF, borrowers must be employed in a public service job. Since 2012, the Department of Education has administered an “employment certification” process. In that time, the borrowers have been told by the Department of Education more than 50,000 times that their employer was “ineligible” for PSLF.
- More than 50 million Americans have lost their jobs since the coronavirus pandemic began in March 2020. These job losses include millions of public service workers, particularly those employed by state and local governments. Recently unemployed public service workers with student debt, whether eventually rehired by their prior employer or whether pursuing a new public service position, will now need to navigate the “employment certification” process again.
- To manage this process, the Department of Education hired the Pennsylvania Higher Education Assistance Agency (PHEAA) to serve as its principal PSLF loan servicer. In this role, PHEAA evaluates information provided by borrowers who submit an Employment Certification Form (ECF) and determines whether a borrower’s employer qualifies under PSLF.
- More than 9,000 pages of documents and records obtained by AFT and SBPC reveal an “employment certification” process in disarray—exposing routine errors, poor recordkeeping, and conflicting policies throughout the process for determining whether borrowers’ employers qualify for federal loan forgiveness. These breakdowns can confuse or deter PSLF applicants and deny borrowers their right to relief. As described in the following report, the investigation reveals:
 - **Borrowers whose employment had been certified as eligible for PSLF were later reconsidered and rejected.** In some cases, borrowers spent years working toward loan forgiveness only to have the Education Department later reject the same employer, damaging borrowers’ financial lives. These findings offer evidence that the allegations made in the recently settled ABA lawsuit affected more borrowers than previously acknowledged.

- **Borrowers employed by the same organization receive different answers when seeking to certify their employment.** Records produced by the Department of Education reveal that PHEAA employees made inconsistent determinations when evaluating employers' eligibility for PSLF, particularly where an organization was not a 501(c)(3) nonprofit or a government agency. In some cases, borrowers working for the same organizations received conflicting correspondence. For example, evidence uncovered in this investigation suggests that multiple borrowers submitting ECFs from the same organizations, including borrowers working at AARP and Fair Elections Legal Network, received different determinations upon submitting their documentation.
 - **There is no rigorous, standardized process for certifying employers.** New evidence obtained by AFT and SBPC suggests that personnel at PHEAA and the Education Department lack a rigorous, standardized process for determining whether a given employer qualifies as eligible for employees to receive PSLF. Instead, employees at PHEAA and ED make inconsistent and subjective determinations about the nature of public service work. In several cases, individual servicer employees were granted wide latitude to make qualitative judgments about the nature of nonprofits' missions and to deny certifications to these nonprofits on an ad hoc basis.
 - **The PSLF program is plagued by poor recordkeeping.** The investigation reveals that the federal government never possessed a comprehensive dataset of employers certified as eligible public service organizations for PSLF, leaving the public without the benefit of a registry of these organizations and leaving PHEAA and ED staff without access to critical data to track decisions and do their jobs effectively. A purportedly comprehensive list was compiled only in response to this investigation in June 2019. Records produced by the Department of Education reveal that an initial list was created in 2016, but this document was error-ridden and demonstrates that the Education Department once approved organizations it would later reject as unqualified.
 - **Borrowers lack a clear process or a formal right to appeal if their employer is rejected.** Borrowers' employment is routinely rejected by the Department of Education. However, borrowers have no formal process to appeal rejections if they believe such a decision was made in error. Documents and correspondence produced by the Department of Education confirm that such errors do occur and raise questions about whether the absence of such a process has deterred or derailed access to loan forgiveness for an unknown number of public service workers.
- These findings indicate widespread failures by both the Department of Education and PHEAA. The report includes a list of recommendations to the Education Department and its student loan servicers to address these breakdowns:
- **Issue new rules to simplify and expand the definitions of "public service," "public service job," and "public service organization."** Findings suggest that current regulations are implemented arbitrarily and would benefit from an immediate overhaul. The Department of Education should initiate a rulemaking to ensure all borrowers, federal employees, contractors, and other stakeholders have rules of the road consistent with Congress' intent when establishing a broad-based right to loan forgiveness.
 - **Provide transparency to borrowers around employment certification denials.** Borrowers are routinely left in the dark on why an employer may have been rejected. The Department of Education should provide each borrower with a clear, plain language explanation of the basis for any denial, modeled on the requirements currently in place when banks and other lenders deny consumers access to credit.

- **Establish a straightforward appeals process that all borrowers and organizations can access when a public service organization is rejected.** The Department of Education should issue public guidance to establish a fair, consistent, and transparent appeals process and ensure final decisions are made by federal employees.
- **Publish a registry of certified public service organizations.** For the benefit of its staff, contractors, and the public, the Department of Education should regularly collect and publish a list of employers considered under PSLF, indicating eligible employers, denied employers, and those pending determination. For newly unemployed public service workers, access to a registry of previously approved public service employers can ensure those with student debt can remain on track for PSLF.
- Contemporaneous with the publication of this report, AFT and SBPC have released a trove of new records obtained through federal and state open records laws. As watchdogs, researchers, and the public continue to scrutinize the widespread failures across PSLF, these records can offer new insight into what went wrong and who is responsible.
- The records being made publicly available include over 9,000 pages of correspondence and records featuring deliberations between the Department of Education and PHEAA concerning the eligibility of applicants for PSLF. Records also include the first purportedly “comprehensive” list of approved and denied employers, as described in more detail in this report.

About this Report

The Public Service Loan Forgiveness (PSLF) program was created in 2007 as part of the bipartisan College Cost Reduction and Access Act (CCRAA) to support America's public service workers facing financial struggles stemming from student loan debt.¹ The PSLF program is premised on the notion that public service workers with student debt should be entitled to student loan forgiveness in exchange for a decade of public service work. This loan forgiveness is necessary because, while public service is a vital public good, workers are not compensated commensurately to their private sector counterparts.² Loan forgiveness can help ensure the economic pressures of student debt do not deter or delay these borrowers from achieving other life milestones, such as purchasing a home, buying a car, retiring, or starting a family.³ PSLF was designed to support people working in a wide range of high-demand public service careers, from servicemembers and teachers to social workers and nurses.⁴

This report is informed by a joint investigation conducted by the American Federation of Teachers (AFT) and the Student Borrower Protection Center (SBPC). This report is the latest in a series of publications examining the administration of the PSLF program by the government and its contractors since the program's inception, in an effort to expose the widespread mismanagement and abuse that has denied or delayed millions of public service workers' access to this critical protection.

The following analysis and commentary are informed by more than 9,000 pages of documents and records produced by the U.S. Department of Education (ED) and state-backed student loan companies that serve as federal contractors, participants in the legacy Federal Family Education Loan Program, or both. These documents and records were produced in response to two dozen requests made by the AFT and the SBPC under the Freedom of Information Act and state open records laws. This report was also informed by court filings, government reports, academic research, government data, and complaints submitted by individual student loan borrowers and published in the Consumer Financial Protection Bureau's (CFPB) public complaint database. Taken together, these sources of information reveal a deeply dysfunctional system created by the federal government's failure to faithfully execute the law as written and industry's efforts to maximize profits at the expense of borrowers' rights.

Introduction

In December 2018, the Student Borrower Protection Center and the American Federation of Teachers partnered to launch a first-of-its-kind investigation into breakdowns plaguing the Public Service Loan Forgiveness program by both the student loan industry and the Department of Education.⁵ This comprehensive effort sought to demand answers and give a voice to the public service workers with student debt who have been denied the benefit of this key protection.

Borrowers must satisfy four requirements to earn loan forgiveness through the PSLF program. To qualify, they must have:

- 1) The right type of loan**
- 2) The right type of payment plan**
- 3) The right number of qualifying payments**
- 4) The right type of employer⁶**

Since the launch of this investigation, we have obtained thousands of pages of communications that document breakdowns related to the eligibility requirements for PSLF. In the following report, we highlight a portion of this production specifically related to the fourth requirement: certifying the right type of employment. This report takes a detailed look at the government’s decision-making process related to certifying employers as “public service organizations.”⁷

Since the Department of Education established a process for certifying employer eligibility in 2012, the government has released very little public information about how this process works. However, based on public data released by the Department of Education, we do know that borrowers have been told more than 50,000 times over this period that their employer was “ineligible” for PSLF.⁸

More than 50 million Americans have lost their jobs since the coronavirus pandemic began in March 2020.⁹ These job losses include millions of public service workers, particularly those employed by state and local governments.¹⁰ Recently unemployed public service workers with student debt, whether eventually rehired by their prior employer or pursuing a new public service position, will now need to navigate the “employment certification” process again.

As described in detail below, we have uncovered new evidence that the administrative processes and practices at the Department of Education and the Pennsylvania Higher Education Assistance Agency (PHEAA)—the primary student loan servicer contracted to administer the PSLF program—have combined to unduly deny or deter borrowers seeking to certify employment for the purpose of pursuing PSLF.

Certifying the Right Type of Employment

When the PSLF program was created by Congress in 2007, the Department of Education was granted the authority to issue regulations establishing eligibility criteria for the program.¹¹ Additionally, Congress tasked the Education Department with governing the conduct of the student loan companies paid to help borrowers navigate this system.¹²

The Higher Education Act requires that borrowers pursuing PSLF be “employed in a public service job during the period in which the borrower makes each of the 120 payments.”¹³ This law offers borrowers a definition of “public service job”:

The term “public service job” means—

(i) a full-time job in emergency management, government (excluding time served as a member of Congress), military service, public safety, law enforcement, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a nonprofit organization), early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten), public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or at an organization that is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title; or

(ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 1059c(b) of this title and other faculty teaching in high-needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.¹⁴

In 2008, the Department of Education under the Bush Administration issued rules to establish a secondary test. In October 2008, the agency wrote a definition of “public service organization” to determine whether a borrower was engaged in a “public service job.”¹⁵

Specifically, the rules set forth that any borrower who worked full-time in any job function for a federal, state, local, or tribal government agency; a public child or family service agency; a tribal college or university; or a 501(c)(3) nonprofit organization would automatically be considered to be working in a “public service job.”¹⁶ These regulations also established criteria for borrowers working for a private nonprofit organization that was organized under a different section of the tax code, where such an organization provided one of a specific set of “public services.”¹⁷

However, years after the program was created and its rules were finalized, student loan borrowers continue to face uncertainty about their employers’ eligibility under the program. This uncertainty is driven, in part, by the

approach to regulation, program administration, and contractor oversight by staff at the Department of Education spanning the Bush, Obama, and Trump administrations.

Years after the program was created and rules were finalized, student loan borrowers continue to face uncertainty about their employers' eligibility under the program.

While borrowers were eligible to make qualifying payments toward PSLF immediately upon its enactment in 2007, it took the Department of Education nearly five years—until January 2012—to establish a process for student loan borrowers to verify that they had the right type of employment.¹⁸ This process—triggered by submitting a government-issued form known as an Employment Certification Form, or ECF—purported to offer borrowers reassurance that they had secured qualifying employment and were in fact on track to earn loan forgiveness.¹⁹

As of March 2020, the Department of Education has received more than four million Employment Certification Forms submitted by borrowers declaring their intent to pursue PSLF.²⁰ However, until now, the public has had little insight into the process by which ED determines whether individual employers qualify as a “public service organization,” as defined by federal rules.²¹

Background

The process for certifying qualified employment has been the subject of significant scrutiny in recent years. Borrowers and public service organizations have raised concerns about the lack of transparency available to those seeking clarity through this process.²² Additionally, law enforcement officials have issued warnings about a system that leaves borrowers vulnerable to the whims of student loan servicing personnel and Education Department staff, with little recourse when borrowers encounter trouble.²³

For example, the American Bar Association (ABA), a non-501(c)(3) nonprofit (or private nonprofit), sued ED in 2016 for approving the organization as a “public service organization” for multiple employees, and then, years later, reversing that decision.²⁴ In early 2019, a judge called the Department’s decision-making process related to employer certification “arbitrary and capricious.”²⁵ When the Department argued that these retroactive ECF denials did not have “immediate or significant” impact on individual borrowers, the judge dismissed the argument as “nonsense.”²⁶

Findings and Analysis

The issues identified in court filings in *American Bar Association v. United States Department of Education* offer evidence of mismanagement and abuse in the employment certification process.²⁷ As discussed below in detail, our investigation offers new evidence that suggests the issues identified in the ABA’s lawsuit were not limited to a single organization. Rather, it appears these issues may be pervasive and widespread.

Records and documents obtained by the SPBC and the AFT reveal:

- **Borrowers employed by the same organization received different answers when seeking to certify their employment.**

Our investigation found that servicer personnel struggled to make determinations of nonprofit status when evaluating private nonprofit employers, a function of the ad hoc nature of the process underpinning these determinations. In some cases, borrowers working for the same legal arm of the same organization received different determinations. For example, we know from court filings in the ABA's lawsuit that borrowers working at both the ABA and Vietnam Veterans of America were originally told their employers were eligible for PSLF but later had those decisions retracted after a reversal by ED's Office of Federal Student Aid (FSA). Our investigation uncovered additional communications that suggest the issues exposed in the ABA's litigation were not isolated. In one example, records offer conflicting answers about whether the private nonprofit organization AARP was considered a qualifying employer under PSLF, suggesting multiple borrowers received conflicting determinations from FSA.²⁸ (See Appendix, Document 1). In another example, a borrower submitting an ECF in 2016 from a private nonprofit organization, Fair Elections Legal Network, appears to have been rejected, even though FSA had previously approved a certification in March 2012 for a different borrower working for that organization. (See Appendix, Document 2).

- **Personnel at PHEAA and FSA made subjective determinations about the nature of "public service" work.** Our investigation found that in several cases individual employees were granted wide latitude to make qualitative judgments about the nature of nonprofits' missions and to deny certifications to these nonprofits on an ad hoc basis. For example, in communications between PHEAA and FSA officials, a nonprofit employer was deemed ineligible for PSLF despite providing direct services for the elderly, described on the organization's website as "care for Holocaust victims by providing vital services."²⁹ In assessing the nature of the service provided by this organization, the PHEAA employee failed to articulate an objective rationale to justify a decision yet denied the request and noted vaguely, "I don't see their efforts as being for the public. . . ." (See Appendix, Document 3). Based on the correspondence produced in response to our investigation, it remains unclear how widespread this practice is or what, if any, controls are currently in place to ensure that all borrowers benefit from a rigorous and objective decision-making process.

- **Personnel at PHEAA relied on Wikipedia and search engines to make determinations about employer eligibility.**

Correspondence between federal employees at FSA and contractors at PHEAA reveal that PHEAA personnel often "researched" the status of employers identified on ECF forms. This research, intended to support decision-making around employer eligibility, appeared to follow no established process and, in some cases, relied on unverified websites, including Wikipedia entries describing the employer under review. For example, in an email from a PHEAA representative sent to an FSA official, the PHEAA employee stated, "Wikipedia definition of Charter School - one thing that surprised me - it says that a

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In several cases individual employees were granted wide latitude to make qualitative judgments about the nature of nonprofits' missions and to deny certifications to these nonprofits on an ad hoc basis.

public school can be managed by a for profit – is that correct?" (See Appendix, Documents 4, 5).

- **Borrowers do not have access to a clear process or a formal right to appeal if their employer is rejected.** In some cases, borrowers whose employers were wrongly rejected have successfully reversed this decision, but any complaint intake process is poorly defined and not publicized or not easily accessible. Records reveal that, in at least a dozen cases, borrowers were able to successfully reverse an initial ECF rejection. After review by either senior PHEAA employees or review by Education Department officials, these employers were certified as public service organizations (See, for example, Appendix, Document 6). Based on the documents reviewed, it is unclear how borrowers learn about the opportunity to escalate a denial. In fact, employer certification denial notices specifically tell borrowers they can reapply only if they have additional information to prove their employer qualifies.³⁰ However, these notices never mention a formal appeals process or identify the steps a borrower can take to escalate issues if their employer is wrongly denied certification. It is possible that FSA's failure to formalize and consistently offer an appeals process drives borrowers away from PSLF before they can escalate a denial.

Example of Wikipedia being used to determine employer eligibility by PHEAA representative



From: Kimberly A Myers [mailto:kmyers@pheaa.org] **On Behalf Of** FedLoan PSLF
Sent: Friday, April 15, 2016 2:04 PM
To: [REDACTED]
Subject: Kla-Mo-Ya Casino
 Hi Taneka! We have another casino for you.

This casino is part of the Klamath Tribe in Oregon. We found one website that listed it as an enterprise of the tribe (Enterprise of Tribe document). Another site (ODAIR Draft document) appears to list the casino as a department. We also located the tribe's Constitution, which states, on page 4, that "...sovereign powers, authority and jurisdiction of the Klamath Tribes extends to all the territory which formerly constituted the Klamath Reservation, and to all property, airspace, natural resources, cultural resources and such other lands or interests...". This suggests that the casino would be considered part of the tribe and therefore would qualify as governmental.

Though we know that Wikipedia isn't the most reliable source of information, it also states that the casino is a tribally-owned gambling establishment and that the casino disburses payments to the tribal members.

As always we appreciate your guidance! Password to follow.

Thanks!

"Though we know that Wikipedia isn't the most reliable source of information, it also states that the casino is a tribally-owned gambling establishment and that the casino disburses payments to the tribal members."

(See Appendix, Document 5.)

How the U.S. Department of Education Tracks Eligible Employers

As described above, FSA empowered individual personnel at both FSA and at PHEAA to adjudicate decisions about qualifying employers on a case-by-case basis, leading to variations in outcomes across employers. In addition to demanding documents exposing breakdowns in this process, the SBPC and the AFT sought to determine whether the government maintained a comprehensive list of employers that were successfully certified as public service organizations since PSLF's inception in 2007 (presumably a key tool as part of any responsible, effective approach to program administration).

The investigation uncovered that no such comprehensive list was ever created by either PHEAA or FSA. In effect, for more than a decade, the thousands of federal employees and government contractors who processed paperwork, answered borrowers' questions, and performed other administrative functions with respect to the PSLF program lacked

Records reveal that, in at least a dozen cases, borrowers were able to successfully reverse an initial ECF rejection. . . . It is unclear how borrowers learn about the opportunity to escalate a denial.

Example of retraction letter being sent for prior denial of PSLF

>
 > From: (b)(5) (b)(5)
 > To: FedLoan PSLF <FedLoanPSLF@phcaa.org>
 > Cc: "Johnson, Debbe" <Debbe.Johnson@ed.gov>, "Foss, Ian" <Ian.Foss@ed.gov>, "Battle, Cynthia" <Cynthia.Battle@ed.gov>, (b)(5) (b)(5)
 > Date: 11/05/2015 05:15 PM
 > Subject: [external]DC 37 Health and Security Plan update

>
 >
 > Hi Diane,
 >
 > DC 37 Health and Security Plan sent in an updated Public Service Loan Forgiveness (PSLF) escalation directly to FSA. In the appeal DC 37 provided additional information on what the organization does and how the legal services provided are not just for union members (see attached). FSA forwarded the appeal to the Office of General Counsel (OGC) for a final decision and based on the new information received, OGC determined that DC 37 Health and Security Plan should be considered as a qualifying employer for the purposes of PSLF.

> Can FedLoan send the borrower a retraction letter for the prior denial?



" . . . Based on the new information received, OGC determined that DC 37 Health and Security Plan should be considered a qualifying employer for the purposes of PSLF. Can FedLoan send the borrower a retraction letter for the prior denial?"

-FSA correspondence

the capacity to quickly determine whether an employer had been previously certified as a public service organization. Further, it appears that both FSA and PHEAA lacked any internal controls to oversee or audit this process. Despite this significant oversight, ED was willing to create this list in response to the inquiry from the AFT and the SBPC. This list was released to the public in conjunction with the publication of this report.³¹

Background

Beginning in January 2012 with the public release of the Employer Certification Form, borrowers began to certify their intent to pursue Public Service Loan Forgiveness. To date, more than 4.29 million ECFs have been submitted by borrowers seeking to confirm their employer's eligibility for the program.³² As described below, the investigation revealed that thousands of these determinations were made, but FSA was not appropriately keeping track of previously approved employers.

This investigation has produced the only list ever compiled of employers certified and denied via ECF as of June 2019—a list that purports to be comprehensive, according to ED officials.³³

Findings and Analysis

As the SBPC negotiated with FSA for document production, two important facts emerged that raised flags about FSA's record-keeping process. Records obtained by the SPBC and the AFT reveal:

- **The federal government never possessed a comprehensive list of employers certified as eligible public service employers. Such a list was compiled only in response to a request from this investigation.** When establishing a process to verify PSLF-eligible employers, FSA relied on PHEAA to track employer eligibility and maintain records. In the more than seven years since the form's creation, FSA failed to maintain its own comprehensive list of employers—a critical tool to administer the program effectively. When the investigation requested this list, ED instructed PHEAA to compile an updated, comprehensive list of employers because FSA lacked the technical capacity to generate such a list on its own. (See Appendix, Document 7).
- **Initial iterations of the list of certified employers produced by FSA failed to include numerous public service employers that the SBPC independently verified were certified by PHEAA in prior years.** Upon receipt of the first purportedly "comprehensive" list of employers, large, high-profile public service employers—including the U.S. Department of Education and the Consumer Financial Protection Bureau—were missing. These omissions, in particular, offer additional evidence of flaws in a record-keeping system that potentially affects millions of public service workers. The omission of these two employers was especially noteworthy because, in 2014, then-Education Secretary Arne Duncan joined then-CFPB Director Richard Cordray in publicly pledging to distribute ECFs to ED and CFPB employees and assist employees when seeking to certify their intent to pursue PSLF.³⁴ The SBPC raised concerns about these omissions with ED officials, who subsequently ordered PHEAA to produce a new "comprehensive" list of employers.³⁵ (See Appendix, Document 8).

To date, more than 4.29 million ECFs have been submitted by borrowers seeking to confirm their employer's eligibility for the program.

Recommendations for the U.S. Department of Education and the Student Loan Industry

The employer certification process is a necessary component of a functioning PSLF program and is key to ensuring public service workers with student debt have access to a secure financial future. Yet, as documents obtained by the SPBC and the AFT indicate, the program remains plagued by administrative failures at the Department of Education and harmful practices by the student loan industry. ED and industry can each take important steps to address the challenges pervading this process, in part by ensuring that PHEAA, the student loan company managing this program, delivers timely, accurate, and consistent service to borrowers. These steps should be accompanied by ED increasing transparency and standardizing requirements for the program itself.

- **Simplify and expand the definitions of “public service,” “public service job,” and “public service organization,” through new rulemaking.** As detailed above, borrowers encounter an inconsistent and error-prone process when seeking to determine whether their employer qualifies as a public service organization, particularly if their employer is a private nonprofit organization that is not organized under section 501(c)(3) of the Internal Revenue Code. In some cases, multiple borrowers working for the same organization have received conflicting answers from PHEAA or FSA when seeking a determination on employment eligibility, suggesting that the current regulations have been implemented arbitrarily and would benefit from revision. ED should promulgate new rules to simplify and expand the definition of “public service job” and “public service organization” to ensure that all stakeholders, including individual borrowers, organizations, FSA employees, government contractors, and market participants, have clear direction when pursuing or administering PSLF. When writing new rules, ED should also focus on clarifying the definition of “public service” as it relates to the evaluation of private nonprofit organizations that are not organized under section 501(c)(3) of the Internal Revenue Code.
- **Provide transparency to borrowers when denying employment certifications.** As the preceding report describes, borrowers are routinely left in the dark when seeking to determine why a public service organization was rejected and the specific justification for such a denial. FSA should regularly provide accurate, precise information to borrowers about all denials. This should include a clear, plain language explanation of the specific grounds for such a denial. When considering how to deliver such a notice, FSA should model its approach after its existing regulatory requirement to deliver “adverse action notices” under the Fair Credit Reporting Act and the Equal Credit Opportunity Act—an obligation that guarantees all borrowers an explanation for the basis of any denial contained in a timely, plain-language written communication.³⁶
- **Establish a fair, consistent, and transparent appeals process that all borrowers and organizations can access when a public service organization is rejected.** Correspondence between PHEAA and FSA related to the process for escalating employer certification denials shows that attempts to escalate by borrowers are handled inconsistently and that the opportunity to seek a review is limited and not well publicized or understood. Further, there is no process for organizations to work directly with FSA or

PHEAA when similarly situated employees receive different treatment from FSA. FSA should immediately issue public guidance establishing a fair, consistent, and transparent appeals process that can be accessed by both individual borrowers and by public service organizations. FSA should also ensure that final decisions on employer certification made via appeals are made by federal employees.

- **Publish a comprehensive, up-to-date registry of public service organizations that have been certified as qualifying employers under PSLF.** As discussed above, our investigation revealed that FSA employees did not have access to a complete record of employers that had previously been certified as public service organizations—revealing not only that the public has never benefited from such a registry, but also that the staff administering the program lacked critical data to do their jobs effectively. For newly unemployed public service workers, access to a registry of previously approved public service employers is critical to ensure those with student debt can remain on track for PSLF. To address the serious deficiencies described above, FSA should, on a quarterly basis, collect and publish a registry of employers, including each organization's federal Employer Identification Number (EIN), the location of each employer, and the category of qualifying employment.ⁱ This registry should indicate all eligible employers, all denied employers, and all employers where determinations are still being made. This registry should be searchable and responsive so borrowers and organizations can quickly identify whether the employer has been certified by FSA. This recommendation is particularly important as FSA makes significant changes to the role that PHEAA plays as the Public Service Loan Forgiveness servicer. It would also empower public service employers to better understand and communicate the benefits of PSLF to public service workers and assist those with student debt in navigating the process for pursuing loan forgiveness.

ⁱ In June 2020, shortly before the publication of this report, the Department of Education's Office of Federal Student Aid introduced a feature to its "PSLF Help Tool" that appears to permit certain borrowers to query an unpublished list of previously certified employers. The purpose of this feature is to permit certain borrowers to preliminarily validate public service employment as part of a streamlined process for pre-populating the Employment Certification Form. Readers should note that this tool, which is limited to Direct Loan borrowers and requires user authentication to access, does not provide all borrowers, employers, or the public with access to necessary information and is inadequate to address the issues identified in this recommendation. See *PSLF Help Tool*, U.S. Dep't of Educ. Office of Fed. Student Aid, <https://studentaid.gov/app/pslfFlow.action#!/pslf/launch> (last accessed on July 3, 2020).

Conclusion

The joint investigation between the AFT and the SBPC continues to uncover repeated breakdowns by both ED and the student loan industry that span the PSLF program. Haphazard or inconsistent determinations about employer eligibility by the government or its contractor affect past, present, and future borrowers seeking to access loan forgiveness. A sound process to certify employment is a critical function, and the failure to offer such a process has jeopardized the financial futures of tens of thousands of borrowers across the country.

As the AFT and the SBPC continue to build on the work of regulators, law enforcement officials, government watchdogs, and private litigants, this investigation seeks to expand understanding of the failures in the PSLF program and to determine who is responsible for those failures. In the months ahead, the AFT and the SBPC will continue to release new data and documents demonstrating that mismanagement by the government and abuse by the student loan industry have harmed millions of teachers, nurses, first responders, and other dedicated public service workers who simply sought to invoke their right to loan forgiveness guaranteed under federal law.

Appendix: Responsive Records

This appendix references specific communications between PHEAA and FSA officials referenced in the report. The comprehensive production of records to FOIA request 19-00571-F can be found at: www.protectborrowers.org/ecf-docs.

Document 1: AARP	Page 18
Document 2: Fair Elections Legal Network	Page 22
Document 3: Conference on Jewish Material Claims Against Germany.....	Page 25
Document 4: North Star Academy Charter School.....	Page 26
Document 5: Kla-Mo-Ya Casino	Page 27
Document 6: DC 37 Health and Security Plan.....	Page 28
Document 7: FSA Email Correspondence on Recordkeeping of Employer Eligibility 1	Page 33
Document 8: FSA Email Correspondence on Recordkeeping of Employer Eligibility 2.....	Page 36

Document 1: AARP

ECFs submitted for the nonprofit organization AARP are considered by PHEAA and FSA staff in a manner that demonstrates there is not a clear process for review, authorization, or recordkeeping of approved entities. Correspondence reveals internal confusion and staff not knowing how to make a determination for the term, "public service for the elderly," which appears in the statutory definition of "public service work." Despite staff indicating that AARP is not an eligible employer, AARP appears under different statuses on various lists provided by ED for this investigation.

From: Tionguico, Rene
Sent: Tuesday, September 13, 2016 1:45 PM
To: FSA.PLI
Cc: Kane, Rachel; Utz, Jon
Subject: FW: AARP

Another PSLF loans issue for our PLI-OPE call.

AARP is claiming they are a public service organization. Although they are not a 501(c)(3)—they are a (c)(4)—they are claiming to provide public service for the elderly. "Public service for the elderly" is not a term defined under regulations.

(b)(5)

From: (b)(5)
Sent: Thursday, September 08, 2016 2:33 PM
To: FedLoan PSLF; (b)(5)

Cc: Battle, Cynthia; Tiongquico, Rene
Subject: RE: AARP

Hi Kim,

Rene would like to escalate this to the Office of General Counsel (OCG). We will keep you posted on a response.

Thanks,

Tancka

From: Kimberly A Myers [mailto:kmyers@pheaa.org] **On Behalf Of** FedLoan PSLF
Sent: Tuesday, September 06, 2016 9:41 PM
To: (b)(5)
Subject: Fw: AARP

Hi Taneka! Although you probably have this decision saved in your records, I just wanted to forward the historical exchange for easy reference. Based on Ian's prior decision, it was determined that this organization doesn't qualify. Although we agree, we now received correspondence disputing the denial and requesting approval of this organization.

They claimed that they are 501(c)(3) - which they are not, they are actually 501(c)(4). They also claimed that they provide 7 public services for the elderly (which they didn't specifically call out in their correspondence). They attached their organizing documents as well as some other documents. We still don't believe they qualify, but due to the escalation, we wanted to forward for your review.

Thanks!

Kimberly A Myers
 Compliance Services
 kmyers@pheaa.org
 (717) 720-2630

----- Forwarded by Kimberly A Myers/PHEAA on 09/06/2016 09:33 PM -----

From: (b)(5) (b)(5)
To: "FedLoan PSLF" <FedLoanPSLF@pheaa.org>, (b)(5) <publicservice@ed.gov>
Cc: "Sipple-Asher, Bessie" <BessieKo.SippleAsher@ed.gov>, "Johnson, Debbe" <Debbe.Johnson@ed.gov>, "Ninemire, Sandra" <Sandra.Ninemire@ed.gov>
Date: 04/25/2013 11:06 AM
Subject: RE: AARP

After further review, I cannot find any evidence that the organization provides a qualifying service. So, unless the borrower presents additional evidence, I don't think it qualifies.

-----Original Message-----

From: Diane Freundel [mailto:dfreunde@pheaa.org] **On Behalf Of** FedLoan PSLF
Sent: Thursday, April 11, 2013 8:50 AM
To: (b)(5)

Cc: Sipple-Asher, Bessie; Johnson, Debbe; FedLoan PSLF; Foss, Ian; Ninemire, Sandra
Subject: Re: AARP

We have not sent this approval yet. We'll hold it. Thanks

Diane

From: (b)(5) (b)(5)
To: (b)(5) (b)(5) "FedLoan PSLF"
<FedLoanPSLF@pheaa.org>
Cc: "Foss, Ian" <Ian.Foss@ed.gov>, "Ninemire, Sandra" <Sandra.Ninemire@ed.gov>, "Sipple-Asher, Bessie" <BessieKo.SippleAsher@ed.gov>, "Johnson, Debbe" <Debbe.Johnson@ed.gov>
Date: 04/10/2013 12:18 PM
Subject: Re: AARP

Diane,

Actually, we need to walk this one back. I found out that the Legal Counsel for the Elderly is an independent offshoot of the AARP. It is a 501(c)(3), but we cannot attribute its activities to the (c)(4) that applied.

So, I'm going to research some more. Have we sent the approval yet?

Ian

On 4/5/13 12:09 , (b)(5) (b)(5) wrote:

>Diane,

(b)(5)

>Ian

>-----Original Message-----
>From: Diane Freundel [mailto:dfreundel@pheaa.org] On Behalf Of FedLoan PSLF
>Sent: Monday, March 18, 2013 2:49 PM
>To: (b)(5)
>Subject: AARP

>
(b)(5)

>(See attached file: AARP.zip)

>Diane Freundel
>Compliance Services
>(717) 720-3267
>fax- (717) 720-3911

>direunde@pheaa.org
>This message contains privileged and confidential information intended
>for the above addressees only. If you receive this message in error
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Code:PHEAA

Document 2: Fair Elections Legal Network

Correspondence show confusion around the determination of ECF eligibility for borrowers from nonprofit organization Fair Elections Legal Network. PHEAA and FSA staff discuss whether to reverse determinations for a borrower that was already approved four years prior. Despite this discussion, Fair Elections Legal Network is listed as a certified employer in the list created by ED for this investigation. Additional documentation indicates instances of Fair Elections Legal Network employees being denied on the basis of an ineligible employer.

Can you tell me if the authorized official for the Fair Elections Legal Network ever submitted an ECF as providing Public Interest Law Services. The ECF that was attached for the borrower in 2015 is certified under Public Education.

Thanks,

Taneka

From: Kimberly A Myers <kmyers@pheaa.org> on behalf of FedLoan PSLF <FedLoanPSLF@pheaa.org>
Sent: Monday, November 21, 2016 6:44:52 AM
To: (b)(5)
Cc: Battle, Cynthia; FedLoan PSLF; Tiongquico, Rene
Subject: Re: Re: Re: Fair Elections Legal Network

Hi Taneka! Just wanted to follow-up on this one as well. Thanks!

Kimberly A Myers
Compliance Services
kmyers@pheaa.org
(717) 720-2630

From: (b)(5) (b)(5)
To: FedLoan PSLF <FedLoanPSLF@pheaa.org>
Cc: "Battle, Cynthia" <Cynthia.Battle@ed.gov>, "Tiongquico, Rene" <Rene.Tiongquico@ed.gov>
Date: 10/07/2016 03:35 PM
Subject: [external]Re: Re: Fair Elections Legal Network

Thanks Kim.

Have a good weekend!

From: Kimberly A Myers <kmyers@pheaa.org> on behalf of FedLoan PSLF <FedLoanPSLF@pheaa.org>
Sent: Friday, October 7, 2016 2:10:02 PM
To: (b)(5)
Cc: Battle, Cynthia; FedLoan PSLF; Tiongquico, Rene
Subject: Re: Re: Fair Elections Legal Network

Hi Taneka! We only have record of this one borrower being approved under the Fair Elections Legal Network, and it was approved on 3/5/12. Thanks!

Kimberly A Myers
Compliance Services
kmyers@pheaa.org
(717) 720-2630

From: (b)(5) <publicservice@ed.gov>
To: FedLoan PSLF <FedLoanPSLF@pheaa.org>
Cc: (b)(5) (b)(5) "Tiongquico, Rene" <Rene.Tiongquico@ed.gov>, "Battle, Cynthia" <Cynthia.Battle@ed.gov>
Date: 10/07/2016 01:09 PM
Subject: [external]Re: Fair Elections Legal Network

Hi Kim,

(b)(5)

Thanks,

Taneka

From: Kimberly A Myers <kmyers@pheaa.org> on behalf of FedLoan PSLF <FedLoanPSLF@pheaa.org>
Sent: Friday, September 16, 2016 12:42:34 PM
To: (b)(5)
Subject: Fair Elections Legal Network

Hi Taneka! This employer was last reviewed in March 2012 (during the beginning stages of our PSLF reviews). We had escalated this one and lan approved as private not-for-profit, and we categorized it under public interest legal services.

We now received a recent escalation of this employer. Now knowing more on the public interest legal services category, we don't believe this employer should qualify. We wanted to escalate to you for a decision. I included our original research as well as our email exchange with lan.

Your guidance is appreciated. Password to follow.

Thanks!

Kimberly A Myers
Compliance Services
kmyers@pheaa.org
(717) 720-2630

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Code:PHEAA

Document 3: Conference on Jewish Material Claims Against Germany

Communications between PHEAA and FSA officials show a nonprofit employer deemed ineligible for PSLF despite providing direct services for the elderly. In assessing the nature of the service provided by this organization, the PHEAA employee denied the request in an ad hoc manner, noting subjectively, "I don't see their efforts as being for the public." The organization continues to be listed as a denied employer in the list provided by ED for this investigation.

From: (b)(5)
Sent: 26 Feb 2013 09:34:33 -0600
To: FedLoan PSLF
Cc: (b)(5) Ian;Johnson, Debbe;Sipple-Asher, Bessie;Ninemire, Sandra
Subject: Re: Conference on Jewish Material Claims Against Germany

Hi Diane,

We agree that this organization does not qualify for PSLF. They don't provide anything that would traditionally be considered legal services, and they do not have clients, as such.

Thanks,

Ian

On 12/27/12 20:48 , "FedLoan PSLF" <FedLoanPSLF@pheaa.org> wrote:

>
 >Hi Ian. This is another one that I'm hesitant to deny, but I don't think
 >they provide a qualifying "public" service. They are a 501(c)(4) - their
 >mission is to secure a small measure of justice for Jewish victims of Nazi
 >persecution through a combination of negotiations, disbursing funds to
 >individuals and organizations, and seeking the return of Jewish property
 >lost during the Holocaust. I don't see their efforts as being for the
 >public, instead they benefit a select group of people. We appreciate your
 >thoughts.
 >
 >Password to follow. I got an error message when creating zip file, but
 >didn't have any problems opening the documents. Let me know if you do.
 >Thanks
 >
 >(See attached file: Conference on Jewish Material Claims Against
 >Germany.zip)
 >
 >
 >Diane Freundel
 >Compliance Services
 >(717) 720-3267
 >fax- (717) 720-3911
 >dfreunde@pheaa.org
 >This message contains privileged and confidential information intended
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Document 4: North Star Academy Charter School

Communications between PHEAA and FSA show reliance on secondary sources, including Wikipedia, to vet a charter school for ECF eligibility. Correspondence indicates a lack of a clear approval process or recordkeeping. The organization was ultimately approved but the emails shows that the PHEAA official recommended approval for certain employers despite being unable to appropriately categorize them.

From: Foss, Ian
Sent: 17 Jul 2012 20:27:00 +0000
To: 'Diane Freundel'
Cc: Sipple-Asher, Bessie; Battle, Cynthia; Johnson, Debbe; Ninemire, (b)(5)
Subject: RE: PSLF - Charter Schools

Diane,

Thanks again for going back and checking. After discussing this with others, we would feel more comfortable if we took an approach to charter schools whereby whatever organization that holds the charter/employs the borrower must independently demonstrate that that organization qualify.

Thus, in the case of an organization that is tax-exempt under 501(c)(3) of the tax code, they would qualify, but not as government. The same holds true for other non-profits providing public education. This would have the effect of saying that no charter school would qualify under the government category, and if the borrower is employed by a for-profit that either holds a charter or runs a charter school, it is not a PSLF-qualifying employer.

Ian

-----Original Message-----

From: Diane Freundel [<mailto:dfreunde@pheaa.org>]
 Sent: Monday, July 16, 2012 9:39 AM
 To: Foss, Ian
 Cc: Sipple-Asher, Bessie; Battle, Cynthia; Johnson, Debbe; Ninemire, Sandra
 Subject: RE: PSLF - Charter Schools

Hi Ian, I reviewed 10 that we approved. I'm confident that they are all eligible, but I'm not sure about the type of organization under which we approved them.

The attached file contains the following:

1. Wikipedia definition of Charter School - one thing surprised me - it says that a public school can be managed by a for profit - is that correct?
2. Information from Sandpoint Charter School's website - what is a charter school - authorized by Title 33 of the Idaho Code - a nonprofit publicly funded and nonsectarian entity.
3. Information from North Star Academy's Wikipedia entry - lists the "authority" as Uncommon Schools, Inc (which I verified is a private nonprofit) and the NJ Comm. of Education. We approved this one as government - I think it should be private non-profit.
4. Two items about Desert Sands Charter School - from their website - CA legislature passed the Charter School's Act in 1992. And from the CA state website - info about the school stating it is "directly funded". We approved as government - they certified as private non-profit.

File is zipped so I could send one folder - no password as I didn't include an borrower data. If you'd like to see any of the ECFs for EINs let me know. Thanks.

(See attached file: Charter Schools.zip)

Diane Freundel

Document 5: Kla-Mo-Ya Casino

Correspondence between PHEAA and FSA highlight their reliance on secondary sources such as Wikipedia to make employer determinations. In this document, a PHEAA official acknowledges that Wikipedia "is not the most reliable source of information." The entity is listed as a certified employer in the list provided by ED for this investigation.

From: (b)(5)
Sent: 19 May 2016 19:42:42 +0000
To: FedLoan PSLF
Cc: (b)(5) Cynthia
Subject: RE: Kla-Mo-Ya Casino
Attachments: KMYC Application Form 01.18.13.pdf

Hi Kim,

We were able to pull up employment information for Kla-Mo-Ya Casino that suggests that it may be separately organized from the tribe. The certification and agreement section of the employment application for Kla-Ma-Ya, states that, "it is understood however, that Kla-Mo-Ya Casino as an enterprise of The Klamath Tribes does adhere to a policy of Indian Preference..." and "I understand and consent that if considered for employment and as a condition for that employment, that I must apply for and obtain a gaming license from the Klamath Tribal Gaming Regulatory Commission KTGRG, a separate regulatory agency, of the Klamath Tribes."

Based on those clauses we would suggest denying the casino and requesting that they provide additional information to show that they are in fact governmental.

Thanks,

Taneka

From: Kimberly A Myers [mailto:kmyers@pheaa.org] **On Behalf Of** FedLoan PSLF

Sent: Friday, April 15, 2016 2:04 PM

To: (b)(5)

Subject: Kla-Mo-Ya Casino

Hi Taneka! We have another casino for you.

This casino is part of the Klamath Tribe in Oregon. We found one website that listed it as an enterprise of the tribe (Enterprise of Tribe document). Another site (ODAIR Draft document) appears to list the casino as a department. We also located the tribe's Constitution, which states, on page 4, that "...sovereign powers, authority and jurisdiction of the Klamath Tribes extends to all the territory which formerly constituted the Klamath Reservation, and to all property, airspace, natural resources, cultural resources and such other lands or interests...". This suggests that the casino would be considered part of the tribe and therefore would qualify as governmental.

Though we know that Wikipedia isn't the most reliable source of information, it also states that the casino is a tribally-owned gambling establishment and that the casino disburses payments to the tribal members.

As always we appreciate your guidance! Password to follow.

Thanks!

Kimberly A Myers
Compliance Services
kmyers@pheaa.org
(717) 720-2630

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Document 6: DC 37 Health and Security Plan

Correspondence between PHEAA and FSA officials detail a case where a borrower disputed a denial and was given the opportunity to provide additional information in order for the employer to be reconsidered for eligibility. After being denied again by OGC, the borrower was able again to dispute the determination, where FSA and PHEAA eventually retracted the denial. It is unclear how borrowers learn about the opportunity to escalate a denial and whether there is a formal process. The organization is approved for employer eligibility in the list provided by ED for this investigation.

From: (b)(5)
Sent: 9 Nov 2015 14:08:54 +0000
To: Foss, Ian
Subject: RE: DC 37 Health and Security Plan update

Thanks for responding! :)

- Taneka

-----Original Message-----

From: Foss, Ian
 Sent: Friday, November 06, 2015 4:42 PM
 To: FedLoan PSLF
 Cc: (b)(5) Battle, Cynthia; Johnson, Debbe
 Subject: Re: DC 37 Health and Security Plan update

They are a non-(c)(3) not-for-profit providing public interest legal services.

> On Nov 6, 2015, at 15:15, FedLoan PSLF <FedLoanPSLF@pheaa.org> wrote:
 >
 > Hi Taneka. Yes, we'll take care of this. What type of organization
 > should we approve them under? Their letter seems to infer they are government.
 > Please let us know.
 >
 > Thanks and have a great weekend!
 >
 > Diane
 >
 >
 >
 > From: (b)(5) (b)(5)
 > To: FedLoan PSLF <FedLoanPSLF@pheaa.org>
 > Cc: "Johnson, Debbe" <Debbe.Johnson@ed.gov>, "Foss, Ian"
 > <Ian.Foss@ed.gov>, "Battle, Cynthia" <Cynthia.Battle@ed.gov>,
 > (b)(5) (b)(5)
 > Date: 11/05/2015 05:15 PM
 > Subject: [external]DC 37 Health and Security Plan update
 >
 >
 >
 > Hi Diane,
 >
 > DC 37 Health and Security Plan sent in an updated Public Service Loan
 > Forgiveness (PSLF) escalation directly to FSA. In the appeal DC 37
 > provided additional information on what the organization does and how
 > the legal services provided are not just for union members (see
 > attached). FSA forwarded the appeal to the Office of General Counsel
 > (OGC) for a final decision and based on the new information received,
 > OGC determined that DC
 > 37 Health and Security Plan should be considered as a qualifying
 > employer for the purposes of PSLF.
 >
 > Can FedLoan send the borrower a retraction letter for the prior denial?
 > Also attached is the response that Ian provided to Ms. Jarvis with an
 > explanation that the approval does not mean that FSA completely agreed

> with the ?rationale or statutory/regulatory interpretation that was
> provided by the organization?s counsel.?
>
> Below are a few ?highlights? from the letter if you are interested:
> DC 37 provides services nearly identify to those provided by legal aid
> offices, at no cost to the individual represented. By case volume, DC
> 37?s legal services department is primarily involved in representing
> this population in housing cases (nearly 3,000 over the past year),
> helping to keep public servants in their homes. But DC 37 also
> provides representation for bankruptcy or other debt issues, parental
> rights cases, consumer protection cases, cases to help individuals
> secure entitlements like food stamps and social security, cases
> assisting with citizenship or immigration issues, and cases involving securing services for public utilities.
> [* * *]
> The population served by DC 37 is made up largely of economic and
> demographic groups known to face significant barriers in accessing
> adequate legal representation and health services. Economically, the
> public servants who receive public services from DC 37 are among the
> lowest paid of city workers, many of whom struggle just to make ends
> meet (some actually live in shelters and are on public assistance)
> while contending with remarkably high cost of living in the region.
> [* * *]
> Finally, DC 37 does not only provide services to union members. DC 37
> services are provided to all NYC public servants (and their families)
> working in or retired from specific job titles, and union membership
> is not a criterion for eligibility for services.
>
> If you have any concerns or questions please let me know.
>
> Thanks,
>
> Taneka
>
> (See attached file: PSLF II&S.pdf)
>
> ----- Message from "Foss, Ian" <Ian.Foss@cd.gov> on Thu, 5 Nov 2015
> 17:20:21 +0000 -----
>
> To: Heather Jarvis
> <heatherwellsjarvis@gmail.com>
>
> Subject: RE: PSLF employment certification
>
>
>
> Hi Heather,
>
> Good news. After considering the fact that the organization does not
> only provide legal assistance as a benefit of union membership, we are
> satisfied that the organization qualifies.
>
> FedLoan Servicing will be sending a letter to the borrower retracting
> the prior denial.
>
> Note that our determination that this organization is a qualifying
> organization does not mean that we necessarily agree with the

> rationale or statutory/regulatory interpretation that was provided by
> the organization's counsel.
>
> Also, understand that, while I am happy to serve as a recipient of
> inquiries like these if you think that FedLoan Servicing is not being
> responsive or is reaching incorrect conclusions about employers (I
> think it's good to have an independent check), I am confident that, if
> the organization had provided either of its letters to FedLoan
> Servicing instead of me, that FedLoan Servicing would have escalated
> the employer again, and we would have reached the same decision.

> Ian

> From: Heather Jarvis [<mailto:heatherwellsjarvis@gmail.com>]

> Sent: Wednesday, November 04, 2015 5:58 PM

> To: Foss, Ian

> Subject: PSLF employment certification

> Ian,

> Thanks again for your careful attention to these important issues.
> Please find attached a letter including information relevant to the
> Department's analysis of H&S as a public interest organization.

> We will look forward to hearing back as your schedule permits. Don't
> hesitate to be in touch if questions arise or any additional
> information is needed.

> All my best,

> Heather

> =====
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> Code:PHEAA

> <PSLF H&S.pdf>

From: (b)(5)
Sent: 28 May 2015 07:03:54 -0500
To: FedLoan PSLF
Cc: Battle, Cynthia; Johnson, (b)(5)
Subject: RE: DC 37 Health and Security Plan

Hi Diane,

OGC came back with a response. The DC 37 Health and Security Plan is denied for the purposes of PSLF. Basically the organization is not providing public services but is providing benefits to union members as part of the benefits of union membership. On the medical side, it is not providing medical services but is acting as an insurer. On the legal services side, it is not practicing public interest law but is providing basic legal services to union members or relatives.

Thanks,

Taneka

-----Original Message-----

From: (b)(5)
Sent: Monday, April 27, 2015 8:04 AM
To: FedLoan PSLF
Cc: (b)(5) Battle, Cynthia; Johnson, Debbe
Subject: RE: DC 37 Health and Security Plan

Hi Diane,

I just wanted to let you know that Ian and I, escalated the DC 37 Health and Security Plan to OGC. The DC 37 Health and Security Plan Trust does not qualify for the basis of providing public health services since it contracts these services to for-profit professional corporations.

There is an outstanding question, however, if the employer provides, "public interest legal services". Attorneys of the plan work with members to prepare contracts, real estate transaction documents, and estate planning documents. It would seem that, because they are funded in part by New York City, that they may provide public interest legal services.

We are specifically checking with OGC for an opinion to determine if these services are in fact provided to "the public" (member-based organizations are not necessarily disqualified) and if they are "free" since the cost is included into the insurance premiums that members of the plan pay.

I'll update you when a decision is made.

Thanks,

Taneka

-----Original Message-----

From: Diane Freundel [<mailto:dfreunde@pheaa.org>] On Behalf Of FedLoan PSLF
Sent: Monday, March 23, 2015 2:13 PM
To: (b)(5)
Subject: DC 37 Health and Security Plan

Hi Taneka, We may have incorrectly denied this employer. It is a 501 (c)(9) entity that seems to be a part of the DC 37 - New York City's largest Public Employee Union. I denied due to being a labor union. The

borrower has disputed the denial via a letter from the DC 37 Municipal Employees Legal Services.

Can you please review? If they potentially qualify as a health plan, we need to determine if they employ any acceptable positions under the Standard Occupational Classifications System and whether those employees provide any qualifying services. Based on our review, we can't find any job postings. Not sure if you could find anything.

Password to follow. Thanks!

(See attached file: DC37 Health and Security Plan.zip)

Diane Freundel
Compliance Services
(717) 720-3267
dfreunde@pheaa.org

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Document 7: FSA Email Correspondence on Recordkeeping of Employer Eligibility 1

Email correspondence from FSA acknowledging that it did not possess a comprehensive list of employers that had been certified as ECF eligible and that its contractor, PHEAA, would have to be compensated in order to produce such a comprehensive list.

2/9/2020

Student Borrower Protection Center Mail - RE: Cost Estimate Element 4 19-00567-F



Tariq Habash <tariq@protectborrowers.org>

RE: Cost Estimate Element 4 19-00567-F

Wilson, Nathan <Nathan.Wilson@ed.gov>
To: Tariq Habash <tariq@protectborrowers.org>
Cc: "Pedersen, AnnMarie" <AnnMarie.Pedersen@ed.gov>

Tue, May 14, 2019 at 8:56 AM

Good morning Tariq,

This is about the cost estimate for Element 4 of 19-00567-F. I have attached the estimate from PHEAA here for each sub-element with some additional details about how they will be creating the document requested.

I also wanted to let you know in case you hadn't discovered it yourself that FSA has published a new PSLF report with a much greater level of detail here: <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data>

Hopefully you find that information helpful. Please let us know if you have any questions or would like to discuss. Thank you!

Sincerely,

Nate Wilson
Office of Communications and Outreach
Federal Student Aid
U.S. Department of Education
830 First Street, NE, Room 22C1
Washington, DC 20202-5361
Phone: (202) 377-4479
Nathan.wilson@ed.gov

From: Wilson, Nathan
Sent: Friday, April 5, 2019 11:24 AM
To: Tariq Habash <tariq@protectborrowers.org>
Cc: Pedersen, AnnMarie <AnnMarie.Pedersen@ed.gov>
Subject: RE: Meeting

<https://mail.google.com/mail/u/1?ik=24ceb969ac&view=pt&search=all&permmsgid=msg-f%3A1633512182084907402&simpl=msg-f%3A1633512182084907402>

1/3

2/9/2020

Student Borrower Protection Center Mail - RE: Cost Estimate Element 4 19-00567-F

Tariq,

I will need to consult with our SMEs about whether that information can be included. Additionally, wanted to give you a heads up that we have received a cost estimate from the servicer for Element 4 of 19-00567-F but we need to research that one a little further with our SMEs. I will have more for you as soon as I have additional information on either issue. Thank you for your patience.

-Nate

From: Tariq Habash [<mailto:tariq@protectborrowers.org>]
Sent: Friday, April 05, 2019 10:50 AM
To: Wilson, Nathan
Cc: Pedersen, AnnMarie
Subject: Re: Meeting

Nathan,

Per my conversation yesterday with AnnMarie, I think we had a few questions about what else would be included in the comprehensive list. Specifically, I am wondering if the following will also be possible to include

- The number of unique times each specific employer shows up on an ECF
- The number of unique borrowers that have submitted a specific employer on at least 1 ECF
- For employers who have both approved and denied ECFs, the number of approved versus the number denied

Let me know if any of these are possible to include. Thanks.

Tariq

On Wed, Mar 27, 2019 at 2:52 PM Wilson, Nathan (Contractor) <Nathan.Wilson@ed.gov> wrote:

Tariq,

This message is to summarize our telephone meeting this afternoon about the ECF employer list. As Ann Marie stated in the meeting, the list we provided is not a comprehensive list. Rather, it is the list of all the employers that were escalated for additional research by PHEAA and shared with the Department.

A comprehensive list of all ECF employers would need to be created by PHEAA which estimated a cost to Department of \$600-\$900 to generate. You stated you would have to do some research into whether your organization would be willing to cover those costs. As it stands, you will follow-up with us on that question. We also briefly discussed a tentative timeline for conducting the administrative searches required for many of the PSLF requests. Please let me know if there is anything to add or if you have any additional questions or concerns. Thank you!

<https://mail.google.com/mail/u/1?ik=24ceb969ac&view=pt&search=all&permmsgid=msg-f%3A1633512182084907402&simpl=msg-f%3A1633512182084907402> 2/3

2/9/2020

Student Borrower Protection Center Mail - RE: Cost Estimate Element 4 19-00567-F

Sincerely,

Nate Wilson

Office of Communications and Outreach

Federal Student Aid

U.S. Department of Education

[830 First Street, NE](#), Room 22C5

Washington, DC 20202-5361

Phone: (202) 377-4479

Nathan.wilson@ed.gov

 **PHEAA estimates on FIOA 19-00567-F Item 4.pdf**
265K

Document 8: FSA Email Correspondence on Recordkeeping of Employer Eligibility 2

Email correspondence with FSA raising concerns about the omission of employers from a document designated as a complete list of employers that had been certified as ECF eligible by PHEAA and FSA. Following this communication, FSA asked PHEAA to produce a more complete list, which can be found at www.protectborrowers.org/ecf-docs.



Tariq Habash <tariq@protectborrowers.org>

Second interim response FOIA requests 19-00565-F and 19-00571-F

Pedersen, AnnMarie <AnnMarie.Pedersen@ed.gov> Wed, Mar 20, 2019 at 2:46 PM
To: Tariq Habash <tariq@protectborrowers.org>, "Wilson, Nathan (Contractor)" <Nathan.Wilson@ed.gov>

We will look into it and get back with you.

From: Tariq Habash [mailto:tariq@protectborrowers.org]
Sent: Wednesday, March 20, 2019 2:32 PM
To: Wilson, Nathan (Contractor)
Cc: Pedersen, AnnMarie
Subject: Re: Second interim response FOIA requests 19-00565-F and 19-00571-F

Just following up. I have serious concerns about this list being comprehensive. Specifically, there are a number of employers excluded from this list that I have a hard time believing would not have had employees submit ECFs. Among them are:

- U.S. Department of Education (ED)
- Consumer Financial Protection Bureau (CFPB)
- The Century Foundation (my former employer, which I have submitted multiple ECFs for, is not listed)
- New America (a partner organization with employees I can confirm have submitted ECFs)

Can you please explain this discrepancy, I think it is one certainly worth noting.

-Tariq

On Wed, Mar 20, 2019 at 2:24 PM Wilson, Nathan (Contractor) <Nathan.Wilson@ed.gov> wrote:

Tariq,

Per our SMEs, yes, it is the comprehensive list provided by PHEAA as of March 12, 2019.

Also, per our phone call this afternoon, I have reached out to our subject matter experts about your clarifying questions related to the employer review list. We will follow up with you as soon as we get a response from them. Please let us know if you have any additional questions. Thanks!

Sincerely,

2/9/2020

Student Borrower Protection Center Mail - Second interim response FOIA requests 19-00565-F and 19-00571-F

Nate Wilson
Office of Communications and Outreach
Federal Student Aid
U.S. Department of Education
830 First Street, NE, Room 22C5
Washington, DC 20202-5361
Phone: (202) 377-4479
Nathan.wilson@ed.gov

From: Tariq Habash [mailto:tariq@protectborrowers.org]
Sent: Wednesday, March 20, 2019 1:56 PM
To: Wilson, Nathan (Contractor)
Cc: Pedersen, AnnMarie
Subject: Re: Second interim response FOIA requests 19-00565-F and 19-00571-F

Thanks Nathan and AnnMarie.

I just want to confirm that the attached employer reviews list is the most up-to-date, comprehensive list of employers received from borrower submitted ECFs from PHEAA.

On Wed, Mar 20, 2019 at 12:08 PM Wilson, Nathan (Contractor) <Nathan.Wilson@ed.gov> wrote:

Tariq,

Good afternoon. I have finished preparing a second interim response to some of the seven requests you submitted on December 19, 2018. This response is for elements of 19-00565-F; 19-00566-F; and 19-00571-F. The bulk of this response is being processed through the Department's FOIA Service Center. However, this message includes some documents we can send you directly as they are being released to you in full.

Attached is the current ECF employer list with columns for state, employer type, and approval status. This document should fully satisfy elements 1-3 of 19-00571-F. Please note that with the exception of columns 5-8, the information on this document is as provided by the borrowers on their ECF forms. In our previous interim release we provided documents responsive to element 4 from 2012-June 2017. Through our FOIA service center, we will also be providing communications from June 2017-Present responsive to element 4 which is the remainder of documents responsive to this element of 19-00571-F.

Additionally, we have prepared a response to 19-00566-F that will be processed through the FOIA Service Center this week.

2/9/2020

Student Borrower Protection Center Mail - Second interim response FOIA requests 19-00565-F and 19-00571-F

Finally, I have attached an updated version of the tracking spreadsheet for your requests which reflects the elements and documents we are providing in this second release. We will continue to provide responsive records to the remaining elements of your requests on a rolling basis as they become available. Please reach out if you have any additional questions or concern. Thank you!

Sincerely,

Nate Wilson

Office of Communications and Outreach

Federal Student Aid

U.S. Department of Education

[830 First Street, NE, Room 22C5](#)

Washington, DC 20202-5361

Phone: (202) 377-4479

Nathan.wilson@ed.gov

Endnotes

1. See College Cost Reduction and Access Act, Pub. L. No. 110-84 (2007); see also 20 U.S.C. § 1087e(m).
2. See, e.g., Keith A. Bender & John S. Heywood, *Out of Balance? Comparing Public and Private Sector Compensation over 20 Years*, Nat'l Inst. On Ret. Sec. (Apr. 2010), available at www.slge.org/wpcontent/uploads/2011/12/Out-of-Balance_FINAL-REPORT_10-183.pdf (finding that on average, public sector jobs require much more education than those in the private sector, and wages and salaries of state and local employees are lower than those for private sector workers with comparable earnings determinants); Memorandum on Level of Comparability Payments for January 2018 and Other Matters Pertaining to the Locality Pay Program, Fed. Salary Council (Dec. 14, 2016), available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation16.pdf>.
3. See *Public Service and Student Debt*, Consumer Fin. Prot. Bureau (Aug. 2013), https://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf; *Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities*, Consumer Fin. Prot. Bureau (June 2017), https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf.
4. See 153 Cong. Rec. S9536 (daily ed. July 19, 2007), available at <https://www.congress.gov/crec/2007/07/19/CREC-2007-07-19-pt1-PgS9534.pdf> ("Mr. Kennedy: . . . So we have made this as wide as we could in terms of trying to respond to that sense that is out there in our schools and colleges, in all parts of our country, urban areas and rural areas, to say: Look, if you want to give something back, we are going to make it possible. We are going to give you a greater opportunity for you to go to college, particularly if you are from working families and low-income. We are going to give you a better opportunity to do that."); see also, e.g., Dep't of Def. Info. Paper, HR4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER Act), U.S. Dep't of Def. (Jan. 2018), available at https://www.insidehighered.com/sites/default/server_files/media/Department-of-Defense-on-PROSPER-Act.pdf.
5. See *Keeping the Promise of Public Service Loan Forgiveness*, Student Borrower Prot. Ctr. (Dec. 2018), <https://protectborrowers.org/wp-content/uploads/2018/12/SBPC-AFT-PSLF-Investigation.pdf>.
6. *Id.*
7. See 34 C.F.R. § 685.219 (2015).

8. See *Data Center: Public Service Loan Forgiveness Data May 2020 PSLF Report*, Fed. Student Aid (May 31, 2020), <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.
9. See *News Release: Unemployment Insurance Weekly Claims*, U.S. Dep't of Labor (June 23, 2020), <https://www.dol.gov/ui/data.pdf>; see also Anneken Tappe, *Nearly 43 Million Americans Have Filed for Unemployment Benefits During the Pandemic*, CNN (June 4, 2020), <https://www.cnn.com/2020/06/04/economy/unemployment-benefits-coronavirus/index.html>.
10. See Megan Cassella & Eleanor Mueller, *"The Last Thing We Need Right Now": States, Cities Hemorrhage Jobs*, Politico (June 10, 2020), <https://www.politico.com/news/2020/06/10/states-cities-losing-jobs-economic-aid-311600>.
11. See College Cost Reduction and Access Act, Pub. L. No. 110-84 (2007).
12. 20 U.S.C. § 1087f; see also *2007-2008 Negotiated Rulemaking for Higher Education – Loan Team Title IV Loan Provisions in the College Cost Reduction and Access Act of 2007*, U.S. Dept. of Educ. (Oct. 2008), <https://www2.ed.gov/policy/highered/reg/hearulemaking/2008/loans.html>.
13. 20 U.S.C. § 1087e(m) (2007).
14. 20 U.S.C. § 1087e(m)(3)(B) (2007).
15. 34 C.F.R. § 685.219 (2015).
16. See 34 C.F.R. § 685.219(b) (2015).
17. *Id.* Readers should also note that as of the publication of this report, the ED's Office of Federal Student Aid counsels borrowers that employers qualifying under this classification are rarely approved. See *Public Service Loan Forgiveness*, U.S. Dept. of Educ., Office of Fed. Student Aid, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service> (last accessed February 26, 2020) ("Other types of not-for-profit organizations: If you work for a not-for-profit organization that is not tax-exempt under Section 501(c)(3) of the Internal Revenue Code, it can still be considered a qualifying employer if its primary purpose is to provide certain types of qualifying public services. *However, in our experience, few organizations meet these criteria.*") (emphasis added).
18. See *Dear Colleague Letter: Employment Certification for Public Service Loan Forgiveness Form*, U.S. Dep't of Educ., Fed. Student Aid (Jan. 2012), <https://ifap.ed.gov/dear-colleague-letters/01-31-2012-gen-12-02-subject-employment-certification-public-service-loan>.
19. See *Why and When to Submit the Employment Certification Form*, U.S. Dep't of Educ., Fed. Student Aid, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/employment-certification-form> (last accessed June 10, 2020).
20. See *supra* note 8.

21. See 34 C.F.R. § 685.219 (2015).
22. See, e.g., *Letter to Senate Health, Education, Labor, and Pensions Committee*, Am. Bar Ass'n. (Feb. 2018), https://www.americanbar.org/advocacy/governmental_legislative_work/aba-day/resources/pslf/.
23. See Press Release, Attorney General Becerra: Education Secretary DeVos Abandons Promise to Americans Who Dedicate Their Careers Serving the Public (Oct. 5, 2018), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-education-secretary-devos-abandons-promise-americans-0>.
24. See Complaint, *Am. Bar Ass'n v. Dep't of Educ.*, No. 1:16-cv-02476 (D.D.C. Dec. 20, 2016), available at <https://www.courtlistener.com/recap/gov.uscourts.dcd.183424.1.0.pdf>.
25. See *Am. Bar Ass'n v. Dep't of Educ.*, 370 F. Supp. 3d 1 (D.D.C. 2019).
26. *Id.*
27. *Id.*
28. Readers should note that three different sets of records offer convincing evidence that AARP in particular was handled inconsistently by FSA. In addition to the correspondence included in the Appendix of this report, the SBPC and AFT received records including a list of "public service organizations" compiled by FSA, on which AARP appears to be identified as a "Government," a "Non-Profit," and a "Private Non-Profit" employer in different places within these records. AARP Foundation, which is a 501(c)3 nonprofit, is also separately identified in this correspondence as a "Non-Profit." See *Preliminary List of Public Service Organizations Produced by Federal Student Aid on February 6, 2019 Part 1 of 2* (2020), Am. Fed'n of Teachers and Student Borrower Prot. Center, <https://bit.ly/2VrFdKi>. Further, AFT and the SBPC released, contemporaneous with the publication of this report, an updated list of employers identified across Employer Certification Forms produced by FSA that purports to be "comprehensive" and on which AARP does not appear to be approved. See *infra* note 31.
29. See *What We Do*, Claims Conference on Jewish Material Claims Against Germany, <http://www.claimscon.org/what-we-do/> (last accessed Jan. 2019).
30. See Exhibit D to the Complaint, *Am. Bar Ass'n v. Dep't of Educ.*, No. 1:16-cv-02476 (D.D.C. Dec. 20, 2016), available at <https://www.courtlistener.com/recap/gov.uscourts.dcd.183424/gov.uscourts.dcd.183424.1.4.pdf> ("Based on what you submitted, your employer does not appear to qualify for PSLF. We included a list of eligibility requirements for PSLF employment below, in the section titled EMPLOYMENT ELIGIBILITY. Please review the employment requirements and reapply if you can provide additional information to show that your employment qualifies.").
31. A copy of this comprehensive database of certified employers is available at www.protectborrowers.org/ecf-docs.
32. See *supra* note 8.

33. Earliest iteration of the employer list was provided by FSA officials on March 20, 2019 as the “current ECF employer list.” Upon further investigation, it was clear that the list was incomplete. The investigation followed up about the nature of the list, at which point FSA officials confirmed that according to “subject matter experts” at FSA, this was a comprehensive list provided by PHEAA. After pointing out the omission of high-profile employers, FSA officials went back to PHEAA. We are not making public the earlier version of the list. More than two months later, on May 30, 2019, FSA produced the “comprehensive ECF employer list requested” in six parts. This list is available for download. See *supra* note 31.

34. See *The HBCU Value Proposition*, U.S. Dep't of Educ. (Sept. 2014), <https://www.ed.gov/news/speeches/hbcu-value-proposition> (“We’ve all agreed to commit to the Public Service Loan Forgiveness pledge, created by the Consumer Financial Protection Bureau. That means we have pledged to talk to our employees about their options for student loan forgiveness, to help them document that they work for a public service organization, and to check in annually with employees to make sure they stay on track.”).

35. The authors of this report remain skeptical that the list subsequently produced by ED is truly “comprehensive.” Contemporaneous with the publication of this report, SBPC and AFT released this data to the public, encouraging the public, including advocates, public service employers, and borrowers who have submitted or certified employment through an Employer Certification Form prior to June 2019, to search for known public service employers and confirm that the employer is in fact included in this list. If you find that your employer is omitted and you have documentation to show that you have submitted an ECF, please reach out to investigations@protectborrowers.org.

36. See, e.g., 12 C.F.R. § 1002.9 (2011) (“Content of notification when adverse action is taken. A notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either: (i) A statement of specific reasons for the action taken; or (ii) A disclosure of the applicant’s right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor’s notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant’s right to have them confirmed in writing within 30 days of receiving the applicant’s written request for confirmation.”).



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