

Congress of the United States

Washington, D.C. 20515

October 29, 2021

Delivered via E-Mail

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Secretary Cardona:

On October 6, 2021, the Department of Education (Department) announced “Transformational Changes to the Public Service Loan Forgiveness Program.”¹ Unfortunately, these changes abuse executive power by rewriting the law to waive existing statutory requirements. We write to you to understand why the Department believes it has the authority to unilaterally change existing law.

The Department is marketing the changes to the public as “an overhaul of the Public Service Loan Forgiveness (PSLF) Program” that will “make the program live up to its promise.” However, the Department fails to explain that its “overhaul” is really the Department pushing beyond its statutory authority and attempting to rule by executive fiat.

Specifically, the statute that governs the PSLF program states that in order for a borrower to receive public service loan forgiveness the borrower must make “120 monthly payments on the eligible Federal Direct Loan” while enrolled in a qualifying repayment plan. The statute clearly defines what qualifies as an “eligible Federal Direct Loan” and a qualifying repayment plan under 20 U.S.C. 1087e(m).

Not only is the statute clear, but the Congressional Record during consideration of the *College Cost Reduction and Access Act of 2007*, under which the PSLF program was created, makes abundantly clear that PSLF was intended as a narrow program related only to Direct Loans. For example, the U.S. House Education and Labor Committee stated in its committee report that “To further encourage public service, the legislation includes revisions to the Direct Loan Income Contingent Repayment program. Individuals who choose public service will have the option to have their loans forgiven after 10 years if payments are made during that time period.”² During debate on the Senate floor, Senator Jeff Sessions voiced the following concerns: “[A]llowing

¹ <https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness>

² <https://www.congress.gov/congressional-report/110th-congress/house-report/210/1?s=2&r=20>

loan forgiveness solely through the Direct Loan Program is not principled... It will undoubtedly give an advantage to the Direct Loan Program as students have no other route in which to receive loan forgiveness than to borrow under the Direct Loan Program.”³ Replying to Senator Sessions, Senator Ted Kennedy once again reiterated, “[T]he loan forgiveness is applicable to those who are on the Direct Loan Program.”⁴

Yet, without any congressional authorization, the Department has unilaterally decided to waive these requirements, allowing borrowers to apply prior payments made on non-eligible federal loans and non-qualifying repayment plans to the 120 monthly payments requirement and have their loans forgiven.

While the Department cites the *Higher Education Relief Opportunities for Students (HEROS) Act of 2003* as its authority to waive the statutory requirements of the PSLF program, that assertion is dubious at best. The HEROS Act allows the Department to take actions to give relief to borrowers who have been aggrieved by a national emergency.⁵ While the COVID-19 pandemic has been declared a national emergency, the issues with PSLF the Department seeks to address predate the pandemic and cannot be blamed on the pandemic. Therefore, to claim that the Department can use this authority to attempt to fix longstanding problems with a program flawed at its inception is a sham.

A recent briefing with your staff made apparent not only that your staff is unable to explain the legal basis for your actions but also that the cost of this policy to the taxpayer is completely unknown. Further, at a recent hearing for the U.S. House Committee on Education and Labor, Chief Operating Officer of the Office of Federal Student Aid, Mr. Richard Cordray, stated that, in addition to the “substantial authority” granted to Secretary by the HEROS Act, the Department is using “other authorities” granted to the Secretary to “effectuate this relief on the [PSLF] program.”⁶ To understand how the Department concluded it has the legal authority to waive the PSLF requirements in the law and to learn the potential cost these changes will impose on taxpayers, we request the following information by November 5, 2021:

- 1) Any and all legal analyses conducted by the Department as well as all documents and communications related to such legal analyses;
- 2) Any and all budget analyses of the costs related to the announced policy change;
- 3) The number of borrowers who have received PSLF, organized by year and how much was forgiven each year;
- 4) The total number of borrowers registered under PSLF and the aggregate debt of those registered;
- 5) Any and all analyses of the potential number and aggregate debt of borrowers with ineligible student loans that work in public service who this policy aims to cover;

³ <https://www.congress.gov/congressional-record/2007/07/19/senate-section/article/S9534-1>

⁴ <https://www.congress.gov/congressional-record/2007/07/19/senate-section/article/S9574-2>

⁵ P.L. 108-76

⁶ <https://edlabor.house.gov/hearings/examining-the-policies-and-priorities-of-the-office-of-federal-student-aid>

Secretary Miguel Cardona

October 29, 2021

Page 3

- 6) Any and all analyses of the potential number and aggregate debt of borrowers in ineligible repayment plans that work in public service who this policy aims to cover;
- 7) Any and all analyses of the potential number and aggregate debt of borrowers with ineligible student loans who are also in ineligible repayment plans who this policy aims to cover;
- 8) All documents and communications related to the announced changes to the PSLF program via executive powers;
- 9) All documents and communications related to the current rulemaking session and proposals undertaken regarding this program;
- 10) Any and all basis for creating an affected individual class under the HEROS Act of persons who have not been in compliance with 20 U.S.C. 1087(m) prior to the beginning of the national emergency; and
- 11) An in-person briefing by General Counsel Lisa Brown and Assistant Secretary James Kvaal about the legal basis for the Department's action.

Thank you for your attention to this matter.

Sincerely,



Richard Burr
Ranking Member
U.S. Senate Committee on Health, Education,
Labor and Pensions



Virginia Foxx
Ranking Member
U.S. House Committee on
Education and Labor