

# Public Service Loan Forgiveness Approval Rate Demystified



**By Parisa Ijadi-Maghsoodi**  
Assistant Director of Public  
Service, University of San  
Diego School of Law

To date, 41,221 borrowers applied for Public Service Loan Forgiveness (PSLF) but only 423 (1%) were approved for federal loan forgiveness.<sup>1</sup> The dismal rate of approval is neither surprising nor should it deter law students and attorneys from relying on loan forgiveness to pursue social justice careers. As explained below, the current approval rate is in no way indicative of the rate at which future applicants will receive loan forgiveness – their rate will inevitably be much higher.

This article aims to demystify PSLF for law students and recent graduates who are justifiably alarmed by the increasingly deafening and dire portrayal of loan forgiveness. Demystification is necessary not only for these individual borrowers, but for the health of the United States justice system which relies on PSLF-track attorneys. Without PSLF, there will be a dearth of public interest attorneys representing indigent defendants, asylum-seekers, homeless families, veterans, children, and the environment.

In light of recent congressional attempts to decimate PSLF (e.g., the PROSPER Act<sup>2</sup>), constituents can effectively defend the program by framing it in a positive light, particularly given its currently low operating costs (due to the low approval rate). PSLF advocates like Brooke Mecker of Equal Justice Works are pursuing federal efforts to preserve PSLF and a new congressional act, the Aim Higher Act, aims to do just that in 2019.<sup>3</sup>

## **Historical Perspective: Congress and the Promulgation of Regulations**

PSLF was created in 2007 when Congress passed the College Cost Reduction and Access Act.<sup>4</sup> Effective October 1, 2007, the Act directed the Secretary of Education to “cancel the balance of interest and principal due” on Direct Loans for borrowers who had made 120 monthly payments while employed in a public service job.<sup>5</sup>

While the Act defined the type of loans eligible for forgiveness,<sup>6</sup> “public service job” was defined broadly, and the Department of Education (Department) did not promulgate regulations for PSLF until October 2008.<sup>7</sup> The regulations defined “public interest law” and “public service organization.”<sup>8</sup> The first defined as “legal services provided by a public service organization that are funded in whole or in part by a local, State, Federal, or Tribal government,”<sup>9</sup> and the second as governmental entities, 501(c)(3) non-profit organizations, and private organizations that provide specific types of public services provided that the business is not for profit, a labor unions, a partisan political organization, or a religious organization.<sup>10</sup>

<sup>11</sup> In January 2012, five years after Congress enacted PSLF, the Department released the Employment Certification Form (“ECF”) for borrowers to certify that their service qualified towards the required 120 qualifying monthly payments.<sup>12</sup> However, the Department has not made annual submission of the form mandatory, and still requires submission via fax or mail, rather than electronically.<sup>13</sup> To perfect a PSLF application, a borrower must submit an ECF for each employer the borrower worked for while making the 120 qualifying monthly payments.

## **The 1% PSLF Approval Rate**

Out of the 41,221 borrowers who applied for Public Service Loan Forgiveness (PSLF), 99% were denied for failing to meet program requirements (32,409 borrowers) or for missing information (11,892 borrowers).<sup>14</sup> While the rate of approval is disappointing, it is not surprising.

Only payments made after PSLF was created (October 2007) qualify for forgiveness, so the earliest any borrowers could submit an application with evidence of the required 120 months of payment was November 2017.

These early applicants requested forgiveness for service conducted before the Department had even promulgated regulations, and for loans that do not qualify for PSLF (before July 2010, the majority of loans issued by the Department were Federal Family Education Loans (FFEL) which are not eligible for PSLF, unless they are consolidated at which point only payments made after consolidation qualify towards PSLF). These applicants conducted the majority of their service before the existence of the ECF, and many did not submit ECFs after the form became available even though doing so would have informed many borrowers that their service did not qualify under the regulations (in 2012 only 28,788 borrower submitted the form, compared to 513,462 in 2017).<sup>15</sup>

Unlike these early applicants, current law students and the majority of public interest attorneys on the PSLF track will be requesting forgiveness for loans that actually *qualify* for PSLF (in June 2010, the Department stopped issuing the non-qualifying FFEL loans), began their service after the promulgation of regulations that defined which service qualifies for PSLF, and regularly submitted ECFs. These applicants will inevitably experience a much higher rate of approval.

### **PSLF Pitfalls**

Once a borrower's ECF is approved, the Department of Education transfers the borrower's loans to FedLoan Servicing.<sup>16</sup> This transfer is the reason many public interest attorneys on the PSLF-track knowingly avoid submitting an ECF. For many borrowers, including this author, the transfer of loans from one servicer to another has resulted in servicing failures that adversely impact progress on the PSLF-track.<sup>17</sup>

As evidenced by recent lawsuits, borrowers on the PSLF track should be aware of common servicing failures: (1) misprocessing the income driven repayment plan, resulting in a monthly payment twice or three times as high as it should be, which the borrower must pay despite it not qualifying towards the 120 required monthly payments; (2) placing the loans in forbearance during which payments do not count towards forgiveness, resulting in the borrower having to maintain qualifying employment far beyond the 120 months; and (3) the servicer advising borrowers that certain loans are not eligible for PSLF, instead of advising that consolidation will make loans eligible for PSLF.<sup>18</sup>

The Department advises borrowers to submit ECFs to certify employment, but receiving certification does not necessarily guarantee loan forgiveness as evidenced by a recent lawsuit involving FedLoan issuing retroactive ECF denials.<sup>19</sup> In 2015, FedLoan issued retroactive ECF denials to borrowers who had submitted ECFs and received confirmation that their years of service providing legal services for indigent clients, including unaccompanied immigrant children through South Texas Pro Bono Asylum Representative Project of the American Bar Association, a nonprofit 501(c)(6) organization, and veterans through Vietnam Veterans of America, a nonprofit 501(c)(19) organization, would qualify for PSLF.<sup>20</sup> It is vital

that borrowers independently confirm that their work is for a *qualifying employer* (generally 501(c)(3)s and governmental entities), as defined by the PLSF eligibility requirements. In September 2018, the United States Government Accountability Office identified FedLoan's mishandling of the PSLF program in a lengthy report which found that the Department failed to provide "a definitive source of information for determining which employers qualify" and "information on borrowers' prior loan payments from the eight other federal loan servicers, which could increase the risk of miscounting qualifying payments."<sup>21</sup> The following month, a federal class action lawsuit was filed against loan servicer Navient.<sup>22</sup>

### **Tips for Qualifying for PSLF**

1. Make sure you are in a payment plan that qualifies for PSLF: REPAYE, PAYE, IBR, ICR.<sup>23</sup>
2. Submit ECFs annually or each time you change employers, but do not rely on FedLoan's certifications – you must independently verify that you work for a qualifying employer as defined by the regulations. .
3. If your servicer changes, take affirmative steps to prevent having your loans put in forbearance – forbearance prevents you from making qualifying payments and will delay your ability to apply for and obtain PSLF.

### **Loan Assistance Beyond PSLF**

PSLF-track borrowers should be paying only 10 percent (15 percent for pre-2014 graduates) of their discretionary income towards loans,<sup>24</sup> but three additional sources of financial assistance may be available to assist public interest attorneys.

First, law schools with strong public interest programs have a Loan Repayment Assistance Program (LRAP), which provides grants or forgivable loans to graduates employed in public service positions, effectively reimbursing a portion of a borrower's loan payments. USD Law recently expanded its program which will assist the increasing number of law students pursuing public interest and social justice careers.<sup>25</sup>

Second, many employers provide LRAP, often as part of a benefits package, to recruit and maintain qualified attorneys.<sup>26</sup> Legal Services of Northern California, which provides free legal services to individuals in poverty, provides attorneys with up to \$400 per month in assistance for up to 20 years.<sup>27</sup>

Third, an increasing number of cities and states are taking steps to offer loan assistance, as evidenced by recent Washington D.C. proposals to cover up to five years of payments for borrowers earning less than \$75,000 a year, and to create an independent agency to refinance loans for city residents.<sup>28</sup> Memphis provides \$50 per month to city employees, and New York assists residents with their loan payments during the two years after graduation.<sup>29</sup>

### **Conclusion**

PSLF-track attorneys play a crucial role in ensuring access to justice for countless low-income individuals and under-served communities. PSLF may seem daunting but the process is easily manageable given the right information. Students and attorneys can direct PSLF questions to Brooke Meckler of Equal Justice Works at [bmeckler@equaljusticeworks.org](mailto:bmeckler@equaljusticeworks.org).

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<sup>1</sup> Public Service Loan Forgiveness Program Data, Department of Education, <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data> (accessed Feb. 1. 2019)

2 Promoting Real Opportunity, Success, and Prosperity through Education Reform Act (the "PROSPER Act"), 115th Congress (2017-2018), H.R. 4505, Rep. Foxx, <https://www.congress.gov/bill/115th-congress/house-bill/4508/text#toc-H0DD0FF2E45414041A8FACE65B4BD4B73> (accessed Jan. 31, 2019).

3 Aim Higher Act, 116th Congress (2018-2019), H.R. 6543, Rep. Scott, <https://www.congress.gov/bill/115th-congress/house-bill/6543> (accessed Jan. 31, 2019).

4 President George W. Bush signed the College Cost Reduction and Access Act into law on September 27, 2007.

5 20 U.S.C. § 1087e(m).

6 20 U.S.C. § 1087e(m)(3)A).

7 34 C.F.R. § 685.219.

8 *Id.*

9 34 C.F.R. § 685.219(a).

10 34 C.F.R. § 685.219(b)(5).

12 OMB No. 1845-0110, Public Service Loan Forgiveness: Employment Certification Form.

13 <https://myfedloan.org/borrowers/special-programs/pslf/pslf-completing-ecf> (accessed Jan. 31, 2019).

14 Public Service Loan Forgiveness Program Data, Department of Education, <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data> (accessed Feb. 1, 2019)

15 ECF Reports Through March 31, 2018, FedLoan Servicing, <https://studentaid.ed.gov/sites/default/files/fsawg/datacenter/library/ECFReport.xls> (accessed Jan. 31, 2019).

16 <https://myfedloan.org/borrowers/special-programs/pslf/pslf-completing-ecf> (accessed Jan. 31, 2019).

17 See *Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency, d/b/a FedLoan Servicing*, Commonwealth of Massachusetts, Superior Court Civil Action No. 178CV02682, Complaint filed August 23, 2017; Office of Attorney General Maura Healey (five enforcement actions brought against student loan "debt relief" companies, and settlements with servicers), <https://www.mass.gov/news/ag-healey-takes-action-against-fifth-student-loan-debt-relief-company> (accessed Jan. 31, 2019); New York Attorney General Letitia James (\$9 million settlement of federal loan servicing claims with ACS Education Services), <https://ag.ny.gov/press-release/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement-federal> (accessed Jan. 31, 2019).

18 *Id.*

19 *American Bar Association v. United States Department of Education*, U.S. District Of Columbia District Court, Case No. 1:16-cv-02476, Complaint filed December 20, 2016.

20 *Id.*

21 United States Government Accountability Office, "Public Service Loan Forgiveness Education Needs to Provide Better Information for the Loan Servicer and Borrowers." Sept. 2018, <https://www.gao.gov/assets/700/694304.pdf>

22 *Hyland et al v. Navient Corporation et al.*, U.S. District Court for the Southern District of New York, Case No. 1:18-cv-09031, Class Action Complaint filed October 3, 2018, [https://www.aft.org/sites/default/files/hyland-navient-complaint\\_100318.pdf](https://www.aft.org/sites/default/files/hyland-navient-complaint_100318.pdf) (accessed Jan. 31, 2019).

23 <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven> (accessed Jan. 31, 2019).

24 *Id.*

25 USD Law LRAP Eligibility, <https://www.sandiego.edu/law/financial-aid/loan-repay-debt-management/lrap/eligibility-requirements.php> (accessed Jan. 31, 2019).

26 "Just Graduated? Here Are 5 Tips To Kickstart Your Student Debt Management." Equal Justice Works, <https://www.equaljusticeworks.org/news/just-graduated-here-are-5-tips-to-kickstart-your-student-debt-management/> (accessed Jan. 31, 2019).

27 <https://www.lsc.gov/grants-grantee-resources/resources-topic-type/retaining-attorneys-loan-repayment-assistance-program>

28 "Equal Justice Works, D.C. Councilmember Aims to Introduce City-Based Loan Forgiveness." HuffPost, Nov. 13, 2017, [https://www.huffingtonpost.com/entry/dc-councilmember-aims-to-introduce-city-based-loan\\_us\\_5a09ad20e4b0f1dc729a6ca6?\\_cldee=cGlqYWRpbWF%E2%80%A6](https://www.huffingtonpost.com/entry/dc-councilmember-aims-to-introduce-city-based-loan_us_5a09ad20e4b0f1dc729a6ca6?_cldee=cGlqYWRpbWF%E2%80%A6) (accessed Jan. 31, 2019); "The District May Get An Agency To Make Student Loans Less Expensive." DCist, <https://dcist.com/story/18/10/17/dc-student-loan-authority/> (accessed Jan. 31, 2019).

29 *Id.*

