



GENERAL

# Public Service Loan Forgiveness: Glitches

04.15.19 | Linda J. Rosenthal, JD



Back in 2007, when the Public Service Student Loan Forgiveness (PSLF) program was established, it seemed like an excellent way to help both struggling college grads as well as the nation's government agencies and nonprofit organizations to lure needed talent away from the private sector which – generally – pays better than public service jobs.

To qualify for PSLF, an applicant must (1) work for a government agency or for certain types of nonprofits; (2) work full-time; (3) have Direct Loans (or consolidate other federal student loans); (4) repay the loans on an "income-driven repayment plan; and (5) make 120 qualifying payments.

At the end of the 10-year-period, the applicant is supposed to have the student loans wiped out.

There were reports of problems all along, but the deluge opened up when, in 2017, the first of the program enrollees reached their ten-year marks and applied for the promised cancellation of their debts.

Seth Frotman, the student loan ombudsman at the Consumer Financial Protection Agency, resigned in disgust in August 2018. He and his staff had reviewed "thousands of borrower complaints" the summer before. His office, in 2017, released a detailed analysis of the program's administrative failings." The problems continued and got worse.

In March 2018, Congress enacted a special, \$350-million fund to "forgive the loans of some borrowers hurt by those mistakes," but that has been a dud so far.

And a devastating report in September 2018 by the Government Accountability Office (GAO) revealed shocking news. The title of the New York Times article on it says it all: 28,000 Public Servants



Sought Student Loan Forgiveness. 96 Got It.

### *Forgiveness Stalled*

Even 12 years ago, it was clear that the fallout from the massive student-loan burden acquired by many students to help defray rising college costs was a huge burden for them as well as a drain on the economy. Graduates who would, ordinarily, shift into consumer mode and purchase cars or even homes were unable to do so.

Granting some relief in certain cases was a no-brainer win-win for everyone. Or so it seemed at the time.

Under the law that Congress enacted in the last months of the Bush Administration, the United States Department of Education (DOE) has the burden of carrying out what turned out to be a complex law with lots of ambiguities and uncertainties.

The way the federal student loan program is structured is that the DOE “is, essentially, a trillion-dollar bank, serving more than 40 million student borrowers.” But this agency that writes the student loans doesn’t have the capacity to administer the paperwork, run the call centers, and handle the day-to-day servicing of these loans. So the DOE contracts with nine firms to handle these duties. “These servicers, as they’re known, are glorified record-keepers and debt collectors. But they’re also powerful gatekeepers.”

The CPFA’s Frotman sadly concluded that “...these servicers, ... with a big assist from the Education Department, were wreaking havoc with the Public Service Loan Forgiveness Program.”

The General Accountability Office agrees. One of the the key conclusions of its September 2018 audit report is that the DOE “failed to provide the necessary, specific, written instructions to the outside firm[s] hired to run the program.

The many ways in which borrowers were left hanging out to dry almost from the beginning of the application process through to the time for seeking confirmation of the student loan forgiveness are described in the articles and links cited here. “Major administrative failings had left both the program’s administrator and borrowers in a state of confusion about the program’s rules.”

Suffice it to say, it was a mess and continues to be a mess – capped off by the dismally tiny percentage of matured student loan forgiveness applications that have been approved.

### *Developments*

There have been two important positive developments in addressing the problems in the Public Student Loan Forgiveness Program.

#### ***Corrective Action Mandated***

The latest official oversight report was released on February 12, 2019, by the Office of the Inspector General (OIG) of the Department of Education. In Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans, the OIG pulls no punches. It exposes “failures to follow federal rules by the loan servicers



who manage the student loans and collect the payments” as well as deficiencies of the Federal Student Aid (FSA) department of DOE which oversees the student loans. The FSA “rarely penalized loan servicers when errors” were found. More specifically, these deficiencies included a “lack of accountability provisions to hold servicers accountable for noncompliance” and a “lack of performance metrics” for the services.”

The OIG ordered the FSA to develop and submit a “final corrective action plan” within 30 days.

#### ***Federal Judge Clarifies Terms***

There have been at least three lawsuits in the past few years by private plaintiff-borrowers as well as by the American Bar Association and by the Attorney General of Massachusetts, Maura Healey.

One of these lawsuits came to a conclusion in late February 2019 as a federal judge upheld the claims of 3 of 4 of the lawyer/borrower-plaintiffs.

Under the federal Public Service Loan Forgiveness program, borrowers must jump through several hoops to earn the right, at the end of the ten-year period, to have their loans forgiven. They must have the “right type of federal loan, make 120 on-time payments, enroll in the correct category of repayment plans and work for an eligible public-service employer.”

The requirement to work for an “eligible public-service employer” has been a minefield of problems during the years of this program. In terms of nonprofit organizations, if the employer is a 501(c)(3), then the borrower is fine. But for other 501(c) categories, there are ambiguities.

In 2017, four public-interest lawyers filed a lawsuit – (along with the American Bar Association) – to “defend their access” to the PSLF program. They asserted that “FedLoan Servicing, which administers the program for the Education Department, issued approval letters that were then rescinded with little or no opportunity to appeal the decision.”

On February 22, 2019, Judge Timothy J. Kelly of the District Court for the District of Columbia issued a lengthy ruling. Three of the four lawyer-borrowers were successful because they had worked for a 501(c)(6) legal organization. The fourth, though, who worked for a 501(c)(19) veterans association, had his claim denied.

#### ***Conclusion***

This is an evolving story that affects huge numbers of public-service-employee student loan borrowers as well as the many nonprofit organizations that have participated in the Public Service Loan Forgiveness program – or who want to benefit from a vast pool of talent in the future.

We’ll follow it and report on further developments.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director