



STUDENT BORROWER
PROTECTION CENTER

PROTECTING MILITARY BORROWERS

How the Department of Education Can Restore the
Promise of Public Service Loan Forgiveness for
American Servicemembers

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Executive Summary

- Student debt has long been a source of concern for members of the military. With approximately 200,000 servicemembers owing nearly \$3 billion in student debt, policymakers and military leaders have repeatedly cited student debt as a threat to our nation’s military readiness. Congress has sought to alleviate the burden of student debt on military borrowers by creating a series of student loan repayment protections—including Public Service Loan Forgiveness (PSLF).
- For more than a decade, the PSLF program has proven to be a valuable tool in military recruitment and retention. As student debt became a primary financial concern of young soldiers and sailors, PSLF has promised a lifeline—allowing military borrowers to continue their service to our country without the looming burden of student debt. However, the promise of PSLF has proven elusive for too many.
- The Higher Education Relief Opportunities for Students Act (HEROES Act) of 2003 was enacted by Congress to provide the Secretary of Education with the authority to grant financial and administrative relief to Americans affected by war, military operations, or national emergencies. In particular, the HEROES Act adds emergency powers to the Higher Education Act which allow the Secretary to execute “waivers and modifications” of “any statutory or regulatory provision” applicable to Title IV funds “as the Secretary deems necessary in connection with a . . . war or military operation. . . .” Notably, the HEROES Act expressly permits the Secretary to authorize broadscale waivers for classes of borrowers.
- This report calls on the Secretary to use the HEROES Act to ensure that all who served on active duty since the creation of the PSLF program receive credit for their time in service, regardless of whether they satisfied the other requirements of the program. Additionally, this report calls on the Secretary to take immediate action to forgive the loans of borrowers who have served on active duty for at least ten years or have served their communities and country for at least ten years through a combination of military and civilian service.
- In 2018, the Student Borrower Protection Center (SBPC) and the American Federation of Teachers (AFT) launched a top-to-bottom investigation of the PSLF program, 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, the SBPC reviewed data from the Department of Education (ED) related to submitted Employer Certification Forms (ECFs), including their Employer Identification Numbers and whether ECFs were approved or denied.

- In preparing this report, the SBPC analyzed all ECFs with Employer Identification Numbers associated with military service. Despite hundreds of thousands of military personnel owing student debt, ED's data shows that only 17,534 military borrowers have submitted ECFs—a staggeringly low number given the potential debt relief offered through PSLF. Moreover, nearly a quarter of these ECFs were denied, raising important questions about servicing breakdowns and misinformation that may be blocking servicemembers' access to this critical protection. These findings are consistent with a 2018 report from the Department of Defense indicating that as few as 6,800 military borrowers were on track for PSLF.
- This report analyzes complaints from servicemembers that shed light on how shoddy servicing practices can derail their pursuit of PSLF. Military borrowers report that servicers fail to inform them about how to qualify for PSLF despite being aware of their ongoing military service. Borrowers also report being provided with inaccurate and misleading information about how to ensure their payments count towards PSLF, with one borrower stating, "based on deliberate misinformation by loan servicers and nonsensical technicalities, my military service, in which my leg function was sacrificed, did not count for anything."
- Through the HEROES Act, the Secretary of Education can fix the servicing failures that have denied too many military borrowers their rights under law. In the aftermath of September 11th, Congress passed the HEROES Act to ensure that military borrowers would be spared needless administrative obstacles as they sought to access critical consumer protections. Unfortunately, over the last two decades as America has remained a nation at war, the Secretary has only used this authority in limited circumstances to waive discrete requirements of certain student loan protections. To date, there has been no broad-based effort to alleviate the burden imposed by our nation's broken student loan system, and military borrowers are bearing the brunt of this fallout. Servicemembers—particularly those who were promised the protections of the PSLF program—deserve better.

Introduction¹

Policymakers have long acknowledged that financial readiness is intrinsic to military readiness and that the unique financial stress imposed by military life can impede America's national security.² In fact, Congress has repeatedly taken steps to mitigate this financial stress with protections specifically crafted to alleviate certain obstacles imposed during the repayment of consumer debt.³

With the emergence of student debt as a primary source of financial distress for servicemembers,⁴ Congress has continued to craft student loan protections with a keen eye towards alleviating the strain on military borrowers.⁵ In 2007, with the introduction of the PSLF program, servicemembers were offered a new avenue to mitigate this

¹ The SBPC would like to thank former SBPC legal fellow Isobel Golden and SBPC military affairs fellow Michael Saunders for their substantial contributions in the drafting of this report.

² See, e.g., Holly Petraeus, *Hollister K. Petraeus Before the U.S. Senate Committee on Commerce, Science & Transportation*, Consumer Fin. Prot. Bureau (Nov. 20, 2013), <https://www.consumerfinance.gov/about-us/newsroom/hollister-k-petraeus-before-the-u-s-senate-committee-on-commerce-science-transportation/> (quoting Admiral Mike Mullen as stating "A sailor's financial readiness directly impacts unit readiness and the Navy's ability to accomplish its mission."); *U.S. military sounds alarm over mounting student loan debt*, Reuters (Oct. 18, 2012), <https://www.reuters.com/article/us-usa-military-studentloans/us-military-sounds-alarm-over-mounting-student-loan-debt-idUSBRE89H11220121018> ("Defense Secretary Leon Panetta told reporters that the No. 1 reason troops lose security clearances was financial troubles, which include things like overwhelming debt for mortgages, credit cards and student loans."); *Alleged Violations of the Servicemembers Civil Relief Act: Hearing Before the H. Comm. On Veterans' Affairs*, 112th Cong. (Feb. 9, 2011) (statement of Chairman Jeff Miller, ". . . [O]ur Nation's war fighters and their families should not have to fight to keep their piece of the American dream while fighting on foreign soil defending the fundamental right that each and every one of us has.").

³ See, e.g., Servicemembers Civil Relief Act of 2003, Pub. L. No. 108-189, 117 Stat. 2835; Post-9/11 Veterans Education Assistance Act of 2008 (title V of Pub. L. No. 110-252).

⁴ See *U.S. military sounds alarm*, *supra* note 2 ("I think the problem may be greater with student loans than it was with mortgages," Petraeus, wife of CIA Director David Petraeus, said, explaining that "many more young servicemembers enter active duty with student loans than with a mortgage."); see also *DOD Teams Up With Financial Bureau to Address Student Loan Problems*, U.S. Marine Corps (Oct. 19, 2012), <https://www.hqmc.marines.mil/News/News-Article-Display/Article/553278/dod-teams-up-with-financial-bureau-to-address-student-loan-problems/> ("[Holly] Petraeus presented the results of a report on the challenges that service members face in repaying student loans. This is a problem, [former Defense Secretary Leon] Panetta said, noting that some 41 percent of service members are paying off an education-related loan.").

⁵ See, e.g., 20 U.S.C. § 1087e(f)(2)(C) (authorizing federal student loan deferment for borrowers serving on active duty, called *military deferment*); 20 U.S.C. § 1087e(o) (ceasing interest accrual on federal Direct Loans for military borrowers serving in areas of hostilities for which they are receiving special pay).

financial burden.⁶ In practice, the PSLF program has proven to be an essential component of the United States military—serving as a valuable recruiting and retention tool across every branch of service, supporting the military readiness of our nation’s Armed Forces, and offering veterans a financial pathway through which they can continue their service to their communities.⁷

To date, hundreds of thousands of public service workers, including servicemembers and veterans, have applied to have their loans forgiven through PSLF.⁸ However, with only two percent of applicants successfully receiving loan forgiveness, the promise of PSLF is broken.⁹ Numerous investigations and reporting efforts, including those conducted by the SBPC and AFT, have documented how the widespread mismanagement of the program by ED and the shoddy servicing practices of ED’s contracted servicers tasked with implementing the program have caused millions of borrowers, including servicemembers, to forfeit their right to debt relief.¹⁰

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⁶ See 20 U.S.C. § 1087e(m). While the Public Service Loan Forgiveness program was not created exclusively for military borrowers, Congress did craft the program intending for it to be a critical consumer protection for members of the military. See, e.g., 153 Cong. Rec. S9559 (daily ed. July 19, 2007), available at <https://www.govinfo.gov/content/pkg/CREC-2007-07-19/html/CREC-2007-07-19-pt1-PgS9534.htm> (“Ms. Mikulski: . . . [in debating legislation to establish the PSLF program] I believe the Kennedy approach on student debt forgiveness is wise and prudent . . . Let’s respect public service. Let’s try to deal with the fact that we are facing critical shortages. Let’s also begin to work together to solve our Nation’s problems. We are willing to spend thousands of dollars to recruit in critical areas in the military. I happen to support that, to keep that sergeant, to recruit that lieutenant and so on—I absolutely think we should.”).

⁷ See, 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), <https://edlabor.house.gov/imo/media/doc/2018-01-10%20DoD%20Opposition%20to%20HR450811.pdf> (“DoD opposes this legislation because the Public Service Loan Forgiveness (PSLF) program has been an important recruitment and retention tool for the military to compete with civilian sector . . .”).

⁸ See U.S. Dep’t of Educ., Off. of Fed. Student Aid, *September 2020 PSLF Report* (2020), <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data> (last accessed Nov. 7, 2020).

⁹ See *id.*; see also Cory Turner, *Why Public Service Loan Forgiveness Is So Unforgiving*, N.P.R. (Oct. 17, 2018), <https://www.npr.org/2018/10/17/653853227/the-student-loan-whistleblower>.

¹⁰ See, e.g., Student Borrower Prot. Ctr., *Keeping the Promise of Public Service Loan Forgiveness* (Dec. 2018), <https://protectborrowers.org/wp-content/uploads/2020/01/SBPC-AFT-PSLF-Investigation.pdf>; Student Borrower Prot. Ctr., *Broken Promises: Employer Certification Failure* (Aug. 2020), <https://protectborrowers.org/wp-content/uploads/2020/08/ECF-Failures.pdf>; Student Borrower Prot. Ctr., *Broken Promises: The Untold Failures of ACS Servicing* (Oct. 2020), https://protectborrowers.org/wp-content/uploads/2020/10/Broken-Promises_ACS.pdf.

As part of a years-long investigation, the SBPC and AFT received employer-level data from the Department of Education related to ECF submissions and approvals.¹¹ While submitting an ECF prior to making 120 payments is

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not mandatory to earn PSLF, a borrower can choose to submit an ECF to document his or her intent to pursue PSLF and receive an accounting of qualified payments made to date.¹² In fact, the Department of Education specifically instructs military borrowers to submit ECFs if pursuing PSLF.¹³

In analyzing the data provided by the Department, the SBPC found that despite at least 200,000 servicemembers owing student debt, only 17,534 of these borrowers submitted ECFs—an astonishingly low number given the potential debt relief offered through PSLF.¹⁴ This

disparity suggests that military borrowers are being denied access to PSLF—a claim echoed in a recent report from the Department of Defense indicating as few as 6,800 military borrowers are on track for PSLF.¹⁵

Complaints from military borrowers show that unnecessary paperwork burdens and inadequate servicing practices have continually interfered with their ability to pursue PSLF. As a result, many of these borrowers face an inescapable financial burden, even after years of service to our country.

Even in the best of circumstances, the process of staying on track for PSLF is cumbersome.¹⁶ When combined with the realities of military life—deployments, constant Permanent Changes of Station (PCS), and training and

¹¹ See *Employer Certification Failure*, *supra* note 10.

¹² See U.S. Dep't of Educ., Off. of Fed. Student Aid, *Public Service Loan Forgiveness Employer Certification Form*, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/employment-certification-form> (last accessed Nov. 7, 2020).

¹³ See U.S. Dep't of Educ., Off. of Fed. Student Aid, *For Members of the U.S. Armed Forces: What you need to know about your federal student loan benefits* (2016), <https://studentaid.gov/sites/default/files/military-student-loan-benefits.pdf>.

¹⁴ For more information on how the SBPC analyzed ECF data, see Mike Saunders & Seth Frotman, *Why So Many Servicemembers are Missing Out on Student Loan Forgiveness, and How the Secretary of Education Can Fix It*, Student Borrower Prot. Ctr (Nov. 11, 2020), <https://protectborrowers.org/heroes-act/>. See also *Employer Certification Failure*, *supra* note 10.

¹⁵ See Dep't of Def. Info Paper, *supra* note 7 (. . . [A]pproximately 6,800 current Service members . . . are anticipating college debt forgiveness under the PSLF Program based on a mutual commitment between the member and the U.S. Government. . .”).

¹⁶ See Consumer Fin. Prot. Bureau, *Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities* (June 2017), https://www.consumerfinance.gov/documents/4854/201706_cfpb_PSLF-midyear-report.pdf.

schooling cycles—it is nearly impossible to navigate the administrative hurdles made worse by shoddy servicing and misinformation.

The problems military borrowers face in accessing critical student loan protections are not unique to PSLF but have nevertheless culminated in a manner that pushes the promise of PSLF beyond reach. Servicemembers have historically struggled to invoke a range of student loan borrower protections guaranteed by law, including interest rate caps while on active duty, zero percent interest while serving in areas of hostility, and repayment assistance through the Department of Defense.¹⁷ In the wake of September 11th, Congress recognized that the administrative burden associated with the Federal Student Aid system may be insurmountable for military borrowers and sought to give the Secretary of Education the authority to alleviate these struggles through the HEROES Act.¹⁸ Under the HEROES Act, the Secretary has extraordinary authority to waive administrative requirements imposed by critical repayment protections during times of war, military operation, or national emergency in order to provide servicemembers with student debt much needed “assistance and flexibility.”¹⁹ Unfortunately, despite the United States remaining a nation at war since the days following September 11, 2001, the Secretary’s use of this authority has been exceedingly limited in scope—even amid the continued, significant struggle of military borrowers pursuing PSLF.²⁰

This report documents the harm military borrowers face when seeking to access vital student loan protections offered by the PSLF program, largely due to needless administrative burdens that are exacerbated by poor servicing practices. Additionally, this report explores the circumstances under which the Secretary of Education can and should exercise her authority under the HEROES Act to remedy these harms and provide relief for hundreds of thousands of servicemembers and veterans with student debt.

¹⁷ See, e.g., Consumer Fin. Prot. Bureau, *The Next Front?: Student Loan Servicing and the Cost to Our Men and Women in Uniform* (Oct. 2012), https://files.consumerfinance.gov/f/201210_cfpb_servicemember-student-loan-servicing.pdf; Consumer Fin. Prot. Bureau, *Overseas & Underserved: Student loan servicing and the cost to our men and women in uniform*, (July 2015) https://files.consumerfinance.gov/f/201507_cfpb_overseas-underserved-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform.pdf.

¹⁸ 20 U.S.C. § 1098ee.

¹⁹ Introduction of the Higher Education Relief opportunities for Students Act of 2003--H.R. 1412, Remarks of Representative John Kline (Extensions of Remarks) (Mar. 25, 2003), <https://www.congress.gov/congressional-record/2003/03/25/extensions-of-remarks-section/article/E561-4>.

²⁰ See *infra* note 79. In August 2020, Education Secretary Betsy DeVos extended payment relief provided by the CARES Act through the end using her authority under the HEROES Act. *Press Briefing by Press Secretary Kayleigh McEnany | 8/10/2020*, The White House (Aug. 10, 2020), <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-kayleigh-mcenany-8-10-2020/> (explaining the authority under which the Secretary extended payment relief).

Roadblocks to Repayment

It is estimated that at least 200,000 servicemembers collectively owe more than \$2.9 billion in student debt.²¹

Fortunately, military borrowers are uniquely situated to benefit from Public Service Loan Forgiveness.²² With an

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increasing number of incoming soldiers and sailors already saddled with student debt, PSLF has proven to be a valuable recruiting tool for the nation's Armed Forces.²³ Moreover, the promise of PSLF remains a critical retention tool as borrowers continue their careers in the military.²⁴ The program requires, in part, that borrowers serve in qualified employment, including military service, for at least 10 years.²⁵ The average servicemember stays in the military for at least seven years, putting them more than halfway towards satisfying these requirements.²⁶ As many of

²¹ Consumer Fin. Prot. Bureau, *Prepared Remarks of Seth Frotman, Assistant Director and Student Loan Ombudsman at the Judge Advocate General's Legal Center and School* (Oct. 17, 2017), https://files.consumerfinance.gov/f/documents/201710_cfpb_Frotman-Remarks-JAG-School.pdf [hereinafter *2017 JAG School Remarks*]. Note that market-wide increases in student debt suggest that the total number of military borrowers and their cumulative balance has likely grown.

²² See *Prepared Remarks of Seth Frotman, Assistant Director and Student Loan Ombudsman at the Judge Advocate General's Legal Center and School* (Oct. 18, 2016), https://files.consumerfinance.gov/f/documents/201610_cfpb_Frotman-Remarks-JAG-School.pdf [hereinafter *2016 JAG School Remarks*] ("Military borrowers are uniquely situated to receive the benefits of PSLF—the average soldier stays in the military for seven years, putting them more than halfway towards meeting the requirements to receive student loan forgiveness. When combined with the fact that 25 percent of veterans work in public service following their military service, the loss of qualified payments during active duty is even more costly.").

²³ In 2012, the Department of Defense estimated that 40 percent of troops had student loan debt. See *DOD Teams Up With Financial Bureau to Address Student Loan Problems*, *supra* note 4.

²⁴ See, e.g., Ben Werner, *Navy Recruiting Could be Hurt if Popular School Loan Forgiveness Program is Canceled*, USNI News (Oct. 30, 2017), <https://news.usni.org/2017/10/30/navy-recruiting-hurt-popular-school-loan-forgiveness-program-canceled> ("The program is an important tool used to attract and retain talent, especially officers with highly sought-after skills. . .").

²⁵ 34 C.F.R. § 685.219. To earn PSLF, Direct Loan borrowers must make 120 monthly payments, on time and in full, while enrolled in a qualified repayment plan and while working in qualified employment. Military service is expressly defined as qualified employment for PSLF.

²⁶ See Cong. Budget Off., *The All-Volunteer Military: Issues and Performance* (July 2007), https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/07-19-militaryvol_0.pdf. Additionally, tens of

these veterans exit military service, the promise of loan forgiveness through PSLF allows them to continue their service to our communities and country.²⁷

To qualify for Public Service Loan Forgiveness, borrowers must satisfy four requirements: 1) borrowers must have the right type of loan; 2) borrowers must work for the right type of employer; 3) borrowers' loans must be enrolled in the right type of repayment plan; and 4) borrowers must make the right number of payments. However, military borrowers report that poor servicing practices affecting each of these requirements impede their ability to earn credit towards PSLF. Servicing breakdowns and unduly burdensome paperwork requirements make it nearly impossible for military borrowers to get on track for and earn continuous credit toward loan forgiveness.²⁸ And unfortunately, these PSLF breakdowns fall in a long line of egregious abuses committed by student loan servicers specifically affecting military borrowers.²⁹ As one borrower described, “[b]ecause of the lies and misinformation

“I was told that none of my active military service, including deployments to Afghanistan, would count for PSLF purposes. This is a slap in the face to all veterans.”

thousands of servicemembers stay in servicer for at least ten years. Lawrence Kapp, *Defense Primer: Active Duty Enlisted Retention*, Cong. Res. Serv. (Jan. 16, 2020), <https://fas.org/sgp/crs/natsec/IF11274.pdf>.

²⁷ See Bureau of Labor Statistics, *Employment Situation of Veterans Summary* (Mar. 19, 2020), <https://www.bls.gov/news.release/vet.nr0.htm>.

²⁸ See *infra* at 13 (“The Wrong Type of Employment”).

²⁹ Student loan servicers—the companies responsible for helping all borrowers, including servicemembers, navigate repayment—have engaged in widespread illegal practices that have derailed military borrowers during repayment, including consistently mismanaging payments, misinforming borrowers, and failing to implement the protections that servicemembers are owed under federal law. For example, in 2014, the Federal Deposit Insurance Corporation and the Department of Justice took action against Sallie Mae and Navient for violating servicemembers' rights under the Servicemembers Civil Relief Act (SCRA) after the government found that companies had failed to provide military members with the six percent rate cap that they were guaranteed, systematically overcharging borrowers serving in active duty. An order was entered for \$60 million in compensation for the 77,000 servicemembers who were impacted. Fed. Deposit Ins. Corp., *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 13, 2014), <https://www.fdic.gov/news/press-releases/2014/pr14033.html>; Dept. of Just., *Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans* (May 13, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>; see also Consumer Fin. Prot. Bureau *Prepared Remarks of Seth Frotman, Deputy Assistant Director and Acting Student Loan Ombudsman at the Consumer Financial Protection Bureau* (Oct. 2015), <https://protectborrowers.org/wp-content/uploads/2019/04/prepared-remarks-of-seth-frotman.pdf> (finding that as of June 2015, only 633 military borrowers had their student loan interest rate reduced to zero percent while serving in an area of hostility and estimating that “more than \$100 million in unnecessary interest charges since this benefit was created.”); *Massachusetts v. Pa. Higher Educ. Assistance Agency*, No. 1784CV0682, 2018 WL 1137520 (Mass. Super. Ct. Mar. 1, 2018) (alleging that the Pennsylvania Higher Education Assistance Authority (PHEAA) systematically misled and mishandled accounts for borrowers pursuing PSLF); *Vullo v. Conduent Educ. Servs., LLC*, Consent Order (N.Y. Dep't of Fin. Servs. Jan. 4, 2019),

propagated by the loan servicers, I was told that none of my active military service, including deployments to Afghanistan, would count for PSLF purposes. This is a slap in the face to all veterans. . . . [S]omehow, based on deliberate misinformation by loan servicers and nonsensical technicalities, my military service, in which my leg function was sacrificed, did not count for anything.”³⁰

The following sections describe the servicing breakdowns military borrowers face when seeking to satisfy each of the requirements of the PSLF program: having the wrong type of loan, the wrong type of employment, the wrong repayment plan, and/or the wrong number of payments.

The Wrong Type of Loan

Only Direct Loans are eligible for forgiveness under PSLF.³¹ However, Congress specifically designed the program to ensure that borrowers could access this vital protection by allowing borrowers with older loans made under the Federal Family Education Loan Program (FFELP) to consolidate these loans into Direct Loans in order to qualify for PSLF.³² Borrowers rely on their student loan servicers to advise them about this requirement, but servicers have a long history of misleading borrowers about the need to consolidate ineligible loans.³³ This

https://www.dfs.ny.gov/system/files/documents/2019/01/ea190104_conduent.pdf (finding that ACS affirmatively misled borrowers about the requirements for PSLF); Jonathan Stempel, *New York sues big U.S. student loan servicer for abusing borrowers* (Oct. 3, 2019), <https://www.reuters.com/article/us-new-york-student-loans-lawsuit/new-york-sues-big-u-s-student-loan-servicer-for-abusing-borrowers-idUSKBN1W1252> (“Attorney General Letitia James adds to a growing list of complaints by borrowers and regulators against the Pennsylvania Higher Education Assistance Agency, which operates as FedLoan and American Education Services. James said FedLoan has ‘failed miserably’ as the sole servicer since 2012 for the federal Public Service Loan Forgiveness program. . . . FedLoan has saddled borrowers with more debt for longer periods by being too slow to process applications, mishandling payments, steering borrowers toward less beneficial repayment options, and even failing to tell borrowers with cancer they could defer repayments.”); Gov’t Accountability Off., *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, GAO-18-547 (Sep. 27, 2018), <https://www.gao.gov/products/GAO-18-547>.

³⁰ Public Comment in response to CFPB-2015-0021: Consumer Financial Protection Bureau Request for Information: Student Loan Servicing (2015), <https://www.regulations.gov/document?D=CFPB-2015-0021-0499>.

³¹ 34 C.F.R. § 685.219(a).

³² 20 U.S.C. § 1087e(m)(3). When military borrowers consolidate pre-service debt to pursue PSLF, their new consolidation loan is ineligible for the interest rate cap offered under the Servicemembers Civil Relief Act, making PSLF even more critical to their long-term financial security. See Consumer Fin. Prot. Bureau, *Tackling Student Loan Debt* (2016), https://files.consumerfinance.gov/f/documents/201604_cfpb_servicemember-student-loan-guide.pdf (“While consolidating may help you qualify for PSLF, remember that consolidating while you are on active duty may mean you lose the ability to request an interest rate reduction under the SCRA, because your loan will no longer be considered a pre-service loan.”).

³³ See *Staying on track while giving back*, *supra* note 16.

problem is particularly acute for servicemembers whose status as a military borrower is known to servicers³⁴ and employment is necessarily eligible for PSLF.³⁵ Complaints from military borrowers show how they struggled to get accurate information about consolidation, and as a result, cannot use their time in service to our country toward PSLF.³⁶ In fact, the most recently available data suggests tens of thousands of borrowers with FFELP loans have been identified by servicers as being on active duty but have not consolidated their loans to pursue PSLF.³⁷ Additionally, even when borrowers take steps to consolidate their loans, servicing breakdowns can delay the process and cost borrowers months and months of lost credit toward PSLF. For example, one borrower described:

I am currently working towards loan forgiveness via the PSLF program as an [redacted] servicemember. I recently learned that 99% of applicants were denied forgiveness for a very similar issue I have experienced. The first two years of my military service there was little information regarding the means to ensure compliance with the complex rules congress established for forgiveness. Further, the loan service company could not answer questions nor provide guidance. Merely through the assistance of an acquaintance, I learned that I must consolidate my loans in order to qualify for PSLF. Nearly two years of payments towards my initial loan payments, paid in the honest and fair spirit of the law, will not count towards loan forgiveness. I believe this is truly an

³⁴ In 2014, following enforcement actions from the Department of Justice and FDIC against ED's contracted servicers for violations of the SCRA, ED modified its contracts to require servicers to affirmatively check borrower accounts against the Defense Manpower Data Center (DMDC) to "identify[] borrowers who are, or who have been, in military service and by confirming the dates of that service." U.S. Dep't of Educ., Off. of Fed. Student Aid, *Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs*, DCL ID:GEN-14-16 (Aug. 25, 2014), <https://ifap.ed.gov/dear-colleague-letters/08-25-2014-gen-14-16-subject-improved-administration-servicemembers-civil>. As a result, servicers are notified of borrowers who are in military service and as such, would potentially be eligible for PSLF. Additionally, servicers are responsible for processing borrowers' requests for military deferment. When a borrower contacts his or her servicer to enroll in military deferment, the servicer would become aware of the borrower's military status and potential eligibility for PSLF.

³⁵ 20 U.S.C. § 1087e(m)(3).

³⁶ See, e.g., Public Comment, *supra* note 30.

³⁷ See Gov't Accountability Off., *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened* 18, GAO-17-4 (Nov. 2016), <https://www.gao.gov/assets/690/681010.pdf> (providing the number of military borrowers with FFELP loans). All FFELP loan borrowers are eligible to consolidate their non-qualifying federal student loans into qualifying Direct Loans. However, some borrowers, particularly those who expect to repay their loan in full in less than ten years, may choose to maintain their FFELP loan rather than consolidate into a Direct Loan.

unfortunate and saddening realization that clearly thousands of other public servants are facing. The execution of this program ha[s] failed those faithfully serving this great nation.³⁸

The Wrong Type of Employment

Under law, all members of the United States military service, including those serving full time on active duty, have eligible employment for Public Service Loan Forgiveness.³⁹ The presumption of eligibility for PSLF is so apparent in military service that all branches of the military have actively promoted the availability of PSLF in recruitment materials.⁴⁰ However, as previously discussed, low rates of Employer Certification Form submissions suggest that military borrowers may not be receiving necessary information about their eligibility for PSLF. Moreover, ECF denial rates suggest the form may impose undue burden on military borrowers, particularly for those who are deployed.

Nearly a quarter of ECFs submitted by servicemembers were denied, despite the employer being clearly identified as a branch of the U.S. military.

Nearly a quarter of ECFs submitted by servicemembers were denied, despite the employer being clearly identified as a branch of the U.S. military.⁴¹ The SBPC and AFT have previously documented how a lack of guidance from the Department of Education and inconsistent processing by the government's student loan servicing contractors often result in improper ECF denials for borrowers.⁴² For military borrowers, particularly those on active duty or deployment, the ECF process has an added hurdle. The Department requires that ECFs be signed by an "authorized official" of the employer, yet provides very limited guidance as to who may be considered to have such authority.⁴³ In the absence of this guidance, servicers have instituted overly burdensome

³⁸ Consumer Fin. Prot. Bureau, Consumer Complaint 3052584 (Oct. 2018), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3052584> (complaint narrative edited for clarity).

³⁹ 34 C.F.R. § 685.219(b) ("Military service, for uniformed members of the U.S. Armed Forces or the National Guard, means 'active duty' service or 'full-time National Guard duty' as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code. . . .").

⁴⁰ See, e.g., *supra* note 24.

⁴¹ See *supra* note 14. Note that the data provided by the Department of Education did not indicate the reason for the ECF denial. The Department of Education lists the following as the most common reasons for ECF denials: missing information, ineligible loans, missing employment dates, or ineligible employment. See *PSLF Report*, *supra* note 8.

⁴² See *Employer Certification Failure*, *supra* note 10.

⁴³ U.S. Dep't of Educ., Public Service Loan Forgiveness (PSLF): Employment Certification Form, OMB No. 1845-0110 (exp. May 31, 2020), <https://studentaid.gov/sites/default/files/public-service-employment-certification-form.pdf> ("An **authorized official** is an official of a qualifying employer who has access to the borrower's employment or service records and is authorized by the

requirements and inconsistent handling of ECFs that ultimately result in improper denials. Complaints from military borrowers show that this lack of guidance makes completing an ECF while on base extremely difficult. For example, one servicemember described:

I . . . have been trying to have my Employment Certification Form verified by [my servicer] for over two years now. . . . All were denied for erroneous reasons . . . I had the person in charge of our [redacted] on base sign and verify my paperwork and now [my servicer] is telling me said person isn't authorized and I need a different signature. However, when I call to find out WHO exactly they want to sign off on my paperwork they are of no help. Additionally, the admin office typed up a formal letter of service stating my start and anticipated end date for [service], this is a legal document. Also, I tried submitting a copy of my [redacted] statement which once again is proof of military service which qualifies under PSLF.⁴⁴

The Wrong Repayment Plan

Active duty servicemembers are entitled to military deferment on their student loans, allowing them to postpone payments for a certain period of time.⁴⁵ Like forbearance, military deferment is intended to provide active duty soldiers and sailors repayment flexibility in discrete, short-term periods of financial distress.⁴⁶ However, in practice, military deferment is

The average military deferment lasts 30 months, costing the borrower as much as \$19,000 in lost loan forgiveness.

employer to certify the employment status of the organization's employees or former employees, or the service of AmeriCorps or Peace Corps volunteers.”).

⁴⁴ Consumer Fin. Prot. Bureau, Consumer Complaint 2720586 (Nov. 2017), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2720586> (complaint narrative edited for clarity); see also Consumer Fin. Prot. Bureau, Consumer Complaint 3507206 (Jan. 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3507206> (“[M]y employer certified my employment . . . with the [military] where I have served (I will have 14 years of service in 2 weeks). I uploaded my completed form . . . in accordance with their established procedures for the PSLF program. [My servicer] responded that my employment could not be certified because my employment end date in section 3 was blank/missing. . . . Clearly the box “Still Employed” is checked. . . . [I]nitially this one was denied due to another erroneous claim by [my servicer] that I did not include the EIN on the certification form, when I clearly had it written on the form. . . . This company has gotten away with erroneously denying me and tens-of-thousands of Public Servants forgiveness through this program for several years with no recourse.”).

⁴⁵ See *For Members of the U.S. Armed Forces*, *supra* note 13.

⁴⁶ See *The Next Front?*, *supra* note 17 (“Many servicemembers are adopting less favorable repayment plans, which may lead to thousands of dollars in excess debt. Postponing loan payments through deferment or forbearance can seem like an ideal option, but could cost servicemembers tens of thousands of dollars over the lifetime of their loans. Providing information about alternative repayment options could help servicemembers avoid a significant amount of unnecessary debt.”)

often used for extended periods of time. The Consumer Financial Protection Bureau reported that the average military deferment lasts 30 months, costing the borrower as much as \$19,000 in lost savings.⁴⁷

As of December 2019, at least 10,000 servicemembers were enrolled in military deferment—a payment status that does not allow borrowers to accrue credit toward PSLF.⁴⁸ However, because borrowers can be enrolled in military deferment over the phone,⁴⁹ servicers may direct them towards this option rather than IDR.⁵⁰ As the CFPB previously reported, “[military borrowers’] servicers would steer them toward options like military deferment or forbearance. Unfortunately, military borrowers often only learn much later that their time in service will not count towards PSLF.”⁵¹ This experience was echoed by one servicemember who explained:

I told [my servicer] I could not pay the monthly payment of \$1,200 a month and . . . was reporting for active service. At no time did anyone suggest that I apply for an income driven repayment plan, which I found out a month ago, would have been my best option, as the payments would have been small, affordable for an E1-E5, and would have counted toward the 120 payments for public service loan forgiveness. I was encouraged, on that phone call, to place my loans into long term military

⁴⁷ 2016 JAG School Remarks, *supra* note 22. Average length of time in military deferment is based on information released by the Consumer Financial Protection Bureau in 2016. *Id.* Since then, the Department of Education has not released updated information about average length of time in military deferment.

⁴⁸ See U.S. Dep’t of Educ., Off. of Fed. Student Aid, *Direct Loan Portfolio by Deferment Type*, <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/DLbyDefermentType.xls> (last accessed Nov. 9, 2020). Estimates are based on FY 2020 Q1 because in March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act, Pub. L. No. 116-136), which, in part, resulted in all federally held student loans being placed in forbearance status. Between FY 2015 Q1 and FY 2020 Q1, the number of borrowers in military deferment remained remarkably consistent, suggesting potentially long-term use of military deferment despite the availability of IDR, and perhaps a lack of efforts by servicers to enroll these borrowers in IDR plans rather than military deferment.

⁴⁹ See *For Members of the U.S. Armed Forces*, *supra* note 13 (“Verbal request from you or your representative if documentation cannot be submitted, for the initial twelve-month period for federal loans.”).

⁵⁰ Enrollment in income-driven repayment requires borrowers to submit a completed application and recent proof of income. Accordingly, the enrollment process cannot be completed in a single phone call. Federal and state law enforcement investigations have repeatedly found that student loan servicers steer borrowers towards quicker but ultimately more costly options like forbearance in order to minimize the amount of time spent on calls with borrowers. See, e.g., Complaint, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. Jan. 18, 2017); Complaint, Pa. v. Navient Corp., No. 3:17-cv-1814-RDM (M.D. Pa. June 19, 2019); Complaint, Cal. v. Navient Corp., No. CGC-18-567732 (Cal. Oct. 16, 2018); Complaint, Ill. v. Navient Corp., No. 2017-CH-00761 (Ill. July 10, 2018); Complaint, Miss. v. Navient Corp., No. G2108-98203 (Miss. July 24, 2018); Complaint, Wash. v. Navient Corp., No. 17-2-01115-1 SEA (Wash. Jan. 18, 2017).

⁵¹ Seth Frotman & Paul Kantwill, *Tips for servicemembers with student debt*, Consumer Fin. Prot. Bureau (Nov. 6, 2017), <https://www.consumerfinance.gov/about-us/blog/tips-servicemembers-student-debt/>.

deferment. At no time during this conversation was I ever told [that the interest on] my loans would capitalize.⁵²

But repayment obstacles are not limited to military deferment—servicemembers repeatedly report a range of servicing breakdowns that impede their ability to ultimately earn PSLF, including servicers failing to maintain borrowers' continuous enrollment in IDR—a critical component to successfully earning PSLF.⁵³ Continuous enrollment in IDR ensures that a borrower's payments remain affordable throughout repayment and that the borrower is on the shortest path to loan forgiveness.⁵⁴ However, the IDR enrollment and recertification process is fraught with misinformation and servicing failures that make the enrollment and recertification process extremely difficult—often requiring civilian borrowers to spend hours on the phone with their servicer and repeatedly send in paperwork to document their income.⁵⁵ Unfortunately, military borrowers, particularly those who are deployed, are often unable to spend hours sorting out their IDR enrollment with their servicer.⁵⁶ As a result, their IDR enrollment may lapse, causing unaffordable payments and missed months of credit toward PSLF.⁵⁷ This lapse could ultimately lead to months or years of needless payments, rather than the ten years of payments required under PSLF.⁵⁸

⁵² *Id.*

⁵³ The soonest a borrower can earn PSLF is ten years, or 120 consecutive qualified payments. 34 C.F.R. § 685.219(c)(1)(iii). However, the Consumer Financial Protection Bureau has reported about the delays borrowers face when seeking to recertify their IDR plans, thus causing additional months and years of payments in their pursuit of PSLF. *See, e.g., Staying on track, supra* note 16; Consumer Fin. Prot. Bureau, *Midyear update on student loan complaints* (Aug. 2016), https://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

⁵⁴ Borrowers must make 120 qualified payments to earn PSLF. While these payments need not be consecutive, maintaining IDR enrollment for 10 years ensures borrowers can earn PSLF in the shortest amount of time permitted by the program.

⁵⁵ Borrowers must annually recertify their income and family size to maintain their IDR payment amount. *See Midyear update on student loan complaints, supra* note 53; *see also* Frotman & Kantwill, *supra* note 51 ("After leaving school, most student loan borrowers enter a six month grace period in which no payments are due. Generally, student loan borrowers must wait until close to the end of their grace period to enroll in an alternative repayment plan, like an IDR plan. Military borrowers report that when they leave college and enlist in the military, this delay often coincides with basic training. By the time servicemembers are eligible to submit their applications for IDR enrollment, they may be in the middle of training and therefore have severely limited access to computers and phones. Military borrowers report that as a result, they are not able to seek assistance from their servicer to navigate the IDR enrollment process. These servicemembers state that they enter repayment and immediately find themselves in financial distress.").

⁵⁶ *See Overseas and Underserved, supra* note 17 at 14 ("[D]epending on the location of a military borrowers' deployment, finding an opportunity to transact with the servicer in real-time can be difficult.").

⁵⁷ *See Midyear update on student loan complaints, supra* note 53.

⁵⁸ *See Staying on track, supra* note 16.

The Consumer Financial Protection Bureau estimates that each year, approximately 6,000 servicemembers suffer direct economic hardship as a result of problems with IDR recertification.⁵⁹ These hardships range from payment shock when student loan payments spike to lost interest subsidies that lead to significant additional interest charges and lost progress towards loan forgiveness, which increases the burden of student debt and the overall cost of their loans.⁶⁰ And with each lapse in recertification, the cost to borrowers pursuing PSLF grows. In one example, a military borrower described his struggle to simply maintain his payments while working toward PSLF:

I have been overcharged on my student loans for six months due to the length of time that it took . . . FedLoan Servicing to recognize that I am a servicemember and to re-adjust my monthly IDR payments in line with my military salary. . . . I had consolidated my loans to begin paying under the Public Service Loan Forgiveness Program, which I certified in XX/XX/XXXX. It took FedLoan Servicing over six months to recognize that I am [redacted], and to reduce my monthly payment from \$390 per month to \$30 per month, which they finally did on XX/XX/XXXX. While it is good that FedLoan Servicing finally reduced my monthly payment to fit my income, the time it took to adjust the payment resulted in my having to pay the higher payment while receiving far lower income than I was previously receiving.⁶¹

The Wrong Number of Payments

After confirming the borrower has the right type of loan, the right type of employer, and is enrolled in the right repayment plan, the borrower must make 120 payments to become eligible for PSLF.⁶² But borrowers face a wide range of servicing breakdowns that can result in missed PSLF payment credit, including lost payments histories following servicing transfers and delayed IDR recertification, that often stretch the period of time needed to earn PSLF far beyond ten years.⁶³

The average servicemember spends seven years in service, providing him or her with the opportunity to satisfy more than half of the required 120 payments.

⁵⁹ 2017 JAG School Remarks, *supra* note 21.

⁶⁰ See *id.*; see also *Staying on track*, *supra* note 16.

⁶¹ Consumer Fin. Prot. Bureau, Consumer Complaint 2706811 (Oct. 2017), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2706811> (complaint narrative edited for clarity).

⁶² See 34 C.F.R. § 685.219.

⁶³ See *Staying on track*, *supra* note 16.

As previously discussed, the average servicemember spends seven years in service, providing him or her with the opportunity to satisfy more than half of the required 120 payments.⁶⁴ However, military borrowers also report facing a series of unique roadblocks that can derail their qualified payments.⁶⁵ For example, various branches of the military offer student loan repayment assistance that can be combined with PSLF to provide the greatest financial relief to the borrower.⁶⁶ However, servicing errors and administrative hurdles have historically meant that these repayment assistance programs do not interact with PSLF and may even jeopardize the borrower's progress toward loan forgiveness.⁶⁷ In particular, when servicemembers seek to apply certain military student loan repayment benefits to their loans, they risk jeopardizing all of their progress toward PSLF.⁶⁸

Military borrowers have long reported difficulty in accessing student loan repayment assistance offered through the Department of Defense Student Loan Repayment Program (DOD SLRP), particularly when trying to combine this assistance with PSLF.⁶⁹ Payments made through DOD SLRP are required to be applied only to loan principal,

⁶⁴ See *supra* note 26.

⁶⁵ See, e.g., Consumer Fin. Prot. Bureau, Consumer Complaint 3182585 (Mar. 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3182585> (I am [a] military member. Been working towards being eligible for PSLF program. . . . When the loans [were] transferred from Great Lakes . . . that payment history was lost. . . . I am almost at the 10 year mark of service, but am unable to get that history from Great Lakes. Without it I would essentially lose close to 2 years' worth of eligible payments. I need them to give me that payment history." [edited for clarity]); Consumer Fin. Prot. Bureau, Consumer Complaint 3180539 (Mar. 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3180539> ("I served in the US Military This is considered qualifying service under the Public Service Loan Forgiveness (PSLF) program. During this time, I made 45 required monthly payments I certified my employment before leaving military service. . . . [M]y student loan servicer, only credited me with 16 PSLF-qualifying payments. . . . I confronted [my servicer] about the huge discrepancy, the reply was that I made extra payments once or twice a year and that was causing them confusion. . . . As my student loan servicer, they have an obligation to ensure my loan records are correct and to take action to correct them when they are not. They have failed to do this."); see also *The Next Front?*, *supra* note 17; *Overseas and Underserved*, *supra* note 17.

⁶⁶ See, e.g., *College Loan Repayment Program (LRP)*, My Army Benefits, U.S. Army, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/College-Loan-Repayment-Program-\(LRP\)?serv=125](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/College-Loan-Repayment-Program-(LRP)?serv=125) (last visited Nov. 9, 2020).

⁶⁷ See generally Consumer Fin. Prot. Bureau, *Innovation highlights: Emerging student loan repayment assistance programs* (Aug. 2017), https://files.consumerfinance.gov/f/documents/cfpb_innovation-highlights_emerging-student-loan-repayment-assistance-programs.pdf; Consumer Fin. Prot. Bureau, *Public Service & Student Debt* (Aug. 2013), https://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf; *Staying on track*, *supra* note 16.

⁶⁸ In 2015, the Department of Education engaged in negotiated rulemaking in an attempt to fix this problem. See Proposed Rule on Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 80 Fed. Reg. 39607 (proposed July 9, 2015) (to be codified at 34 C.F.R. §§ 668, 682, 685), <https://www.federalregister.gov/documents/2015/07/09/2015-16623/student-assistance-general-provisions-federal-family-education-loan-program-and-william-d-ford>.

⁶⁹ See generally Consumer Fin. Prot. Bureau, *Innovation highlights: Emerging student loan repayment assistance programs* (Aug. 2017), https://files.consumerfinance.gov/f/documents/cfpb_innovation-highlights_emerging-student-loan-repayment-assistance-programs.pdf.

not interest,⁷⁰ but the ubiquity of student loan interest, and in particular, capitalized interest, makes benefitting from these programs difficult for military borrowers.⁷¹ Industry described the myriad of problems and confusion military borrowers face when seeking to access DOD SLRP:

Servicers are required to apply the DOD SLRP payment as a principal credit versus applied as a standard installment payment, which can frustrate borrowers when payments cannot be applied to a specific loan, or be used to cover future monthly payments. In some cases, the loan eligible for the DOD SLRP payment may be paid off and the servicer is not permitted to exercise flexibility and direct the payment to another loan. Confusion may increase given the PSLF regulation allows a lump sum DOD SLRP payment to satisfy 12 payments for PSLF discharge eligibility while the payment may not be considered an installment payment and count towards IDR forgiveness, depending on military payment rules.⁷²

In 2015, the Department of Education sought to fix many of these obstacles, but recent complaints from military borrowers suggest that they may still struggle when seeking to apply repayment assistance to their loan.⁷³ Moreover, it remains unclear whether programmatic fixes or payment relief was applied retroactively for military borrowers who had already been denied PSLF qualified payment credit when applying their repayment assistance to their loans.

[assistance-programs.pdf](#); Consumer Fin. Prot. Bureau, *Public Service & Student Debt* (Aug. 2013), https://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf; *Staying on track*, *supra* note 16.

⁷⁰ Consumer Bankers Assoc., Educ. Fin. Council, Nat'l Council of Higher Educ. Res. & Student Loan Servicing Alliance, Comment on Department of Education Regulatory Reform 4, ED-2017-OS-0074 (Sep. 20, 2017), https://cdn.ymaws.com/sites/www.ncher.us/resource/resmgr/images/letters-testimony/2017/09-20-17_CBA-EFC-NCHER-SLSA_.pdf ("Most often payments are to be applied to principal and may not be applied to interest or interest that may have previously been capitalized.").

⁷¹ In 2014, Senator Tom Harkin sought to eliminate this hurdle by introducing the Higher Education Affordability Act. S 2965 113th Cong. § 451 (2014), <https://www.congress.gov/bill/113th-congress/senate-bill/2954/text>.

⁷² *Supra* note 70.

⁷³ See, e.g., Consumer Fin. Prot. Bureau, Consumer Complaint 3210543 (Apr. 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3210543>; Consumer Fin. Prot. Bureau, Consumer Complaint 2715580 (Oct. 2017), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2715580>; Consumer Fin. Prot. Bureau, Consumer Complaint 2037416 (July 2016), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2037416>. In 2020, the Department of Education announced new efforts to fix the application of DOD SLRP payments for borrowers pursuing PSLF. U.S. Dep't of Educ., Off. of Fed. Student Aid, *See What's New with the Public Service Loan Forgiveness (PSLF) Program*, <https://studentaid.gov/articles/see-whats-new-pslf-program/> (last visited Nov. 9, 2020).

Remedying Military Borrower Harm through the HEROES Act

Since the creation of the PSLF program, and as evidenced by the SBPC's newly released data on servicemember ECFs, military borrowers have struggled to access the promise of loan forgiveness. As previously described, servicemembers face a wide range of unnecessary pitfalls, often stemming from the poor implementation of the administrative requirements—the same type of administrative requirements expressly contemplated by the HEROES Act.⁷⁴

However, it doesn't need to be this way. The Secretary of Education can use the HEROES Act to fulfill the promise of PSLF for all members of the Armed Forces with student debt who dedicated themselves to serve our country. The Secretary can effectuate the underlying principles of the PSLF program to ensure that if someone has student debt and served in the military, each month he or she served will be counted as a qualifying month toward loan forgiveness—the very result Congress intended in creating both the HEROES Act and the PSLF program.

The HEROES Act grants the Secretary of Education nearly unfettered authority to “waive or modify any statutory or regulatory provision applicable” to Title IV programs, including the PSLF program, “as the Secretary deems necessary in connection with a war or other military operation or national emergency. . . .”⁷⁵ In particular, Congress granted the Secretary express authority to “waive or modify” any provision “as may be necessary to ensure” that “recipients of [federal student loans] . . . who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals.”⁷⁶

The Secretary of Education can use the HEROES Act to fulfill the promise of PSLF for all members of the Armed Forces with student debt who dedicated themselves to serve our country.

⁷⁴ 20 U.S.C. § 1098bb(a)(2)(B).

⁷⁵ 20 U.S.C. § 1098bb(a)(1).

⁷⁶ 20 U.S.C. § 1098bb(a)(2)(A) (“The Secretary is authorized to waive or modify any provision described in paragraph (1) as may be necessary to ensure that recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals”).

In other words, the HEROES Act explicitly provides the Secretary with the authority to waive or modify *any* provision that stands in the way of servicemembers' financial readiness, including their ability to access the critical financial relief offered through PSLF.

Any borrower who served on active duty since 2007 is an affected individual.

The Secretary of Education's broad discretion under the HEROES Act may be applied to help any "affected individual," which includes anyone who "suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary."⁷⁷

Since September 18, 2001, following the Authorization for Use of Military Force by Congress in response to the September 11th attacks,⁷⁸ the United States has maintained a continuous state of military authorization with ongoing troop mobilization.⁷⁹ As a result, members of the U.S. military have routinely been called to service,

⁷⁷ *Id.*; 20 U.S.C. § 1098ee (defining an affected individuals as an individual who: "(1) is serving on active duty during a war or other military operation or national emergency; (2) is performing qualifying National Guard duty during a war, operation, or emergency; (3) resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or (4) suffered direct economic hardship as a direct result of a war or other military operation or national emergency.").

⁷⁸ Authorization for Use of Military Force, S. J. Res. 23 (H. J. Res. 64), 107th Cong. (2001) (enacted), <https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf>.

⁷⁹ Note that Congress has not declared war since 1942. *Official Declarations of War by Congress*, U.S. Sen., https://www.senate.gov/pagelayout/history/h_multi_sections_and_teasers/WarDeclarationsbyCongress.htm (last visited Nov. 9, 2020). However, the legislative intent of the HEROES Act was to treat Authorized Use of Military Force as the equivalent of a "war or military operation" as described in the law—the same military operations that have been continuously in effect since October 2001 (On October 7, 2001, President Bush initiated Operation Enduring Freedom, which lasted under December 2014. In January 2015, President Obama initiated Operation Freedom's Sentinel, which is still in effect at the time of publication of this report. As of October 2019, more than 184,000 troops were deployed globally. Thomas Gibbons-Neft & Eric Schmitt, *Despite Vow to End 'Endless Wars,' Here's Where About 200,000 Troops Remain*, N.Y. Times (Oct. 21, 2019), <https://www.nytimes.com/2019/10/21/world/middleeast/us-troops-deployments.html>). As described by Representative John Kline, the HEROES Act is intended to address the financial burden imposed by student debt as military borrowers served our country following the September 11th attacks, stating "As families send loved ones abroad to defend our Nation, the Higher Education Relief Opportunities for Students Act will allow the Secretary of Education to reduce some of the effects of that upheaval here at home." 149 Cong. Rec. 48, 12 (daily ed. Mar. 25, 2003) (statement of Rep. John Kline), <https://www.congress.gov/congressional-record/2003/03/25/extensions-of-remarks-section/article/E561-4>; see also Cong. Res. Serv., *Instances of Use of United States Armed Forces Abroad, 1798-2020*, R42738 (July 2020), <https://fas.org/sqp/crs/natsec/R42738.pdf> (detailing multiple deployments every year from 2001 – 2020). Should the Authorized Use of Military Force (AUMF) be rescinded by Congress, the Secretary still retains authority to retroactively execute waivers for all periods in which the AUMF was in effect.

creating acute financial distress for the men and women in uniform.⁸⁰ This stress is particularly prevalent among servicemembers with student debt, as is demonstrated by at least 10,000 military borrowers remaining enrolled in military deferment.⁸¹

In 2007, when seeking to make permanent the authority granted under the HEROES Act of 2003, Congress indicated its intent for this authority to apply during the continued military authorization.⁸² As Representative Joe Sestak noted, the authorities granted by the HEROES Act provided essential protections to military borrowers:

You don't want them looking back at some problems at home, at debt at home that is hurting their families, nor do you want them looking ahead into some type of future that they want to have. Their safety and the safety of their brethren, the men and women standing on either side of them, depends upon them having their head in the game. That is why this bill is so very important.⁸³

Servicemembers with student debt may be placed in a worse position financially because of that debt.

Through the HEROES Act, the Secretary can waive certain requirements of the PSLF program to ensure that servicemembers are “not placed in a worse position financially in relation to [their federal student loan debt] because of their status as affected individuals.”⁸⁴ In other words, military borrowers should not be financially harmed simply because they are in the military. And yet, when the unique constraints of military life combine with a broken student loan system, military borrowers are harmed specifically because of their status as

⁸⁰ See, e.g., Reuters, *supra* note 2 (“Some 41 percent of America’s armed forces are holding student debt, according to one recent survey, and Pentagon officials say financial troubles are among the top sources of anxiety among troops -- sometimes even topping war itself.”); Sharon Epperson, Katie Young & Jessica Dickler, *Military families say this is their top concern*, CNBC (May 25, 2019), <https://www.cnbc.com/2019/05/24/for-military-families-financial-concerns-outweigh-deployment-issues.html>; David Frank, *Financial Concerns Especially Stressful for Military Families*, AARP (Feb. 6, 2019), <https://www.aarp.org/home-family/voices/veterans/info-2019/survey-family-stress.html>; Holly Petraeus, *Testimony of Holly Petraeus before the House Committee on Veterans Affairs, Consumer Fin. Prot. Bureau* (Feb. 9, 2011), <https://www.consumerfinance.gov/about-us/newsroom/testimony-of-holly-petraeus-before-the-house-committee-on-veterans-affairs/>.

⁸¹ *Direct Loan Portfolio by Deferment Type*, *supra* note 48; see also *The Next Front?*, *supra* note 17.

⁸² The HEROES Act was originally slated to expire in 2007. In 2007, a bipartisan coalition of representatives introduced legislation to make the waiver authority under the HEROES Act permanent. See Pub. L. 110-93. In doing so, Representative Sestak noted the United States’ ongoing military conflicts, stating “These provisions have been critical to our men and women serving in Iraq, Afghanistan and elsewhere.” 153 Cong. Rec. 143, 50 (daily ed. Sep. 25, 2007) (statement of Rep. Joe Sestak on H.R. 3625), <https://www.congress.gov/congressional-record/2007/09/25/house-section/article/H10789-1>.

⁸³ *Id.*

⁸⁴ 20 U.S.C. § 1098bb(a)(2)(A).

servicemembers. In addition to the impact of student debt on military readiness,⁸⁵ discrete harm has been well documented by federal and state law enforcement officials, investigators, and regulators.⁸⁶ Unfortunately, these problems persist as military borrowers try to navigate the PSLF program.

As previously discussed, maintaining enrollment in IDR and staying on track for PSLF—the primary means through which military borrowers can ensure long term financial stability with respect to their student loans—often requires extensive outreach and personal advocacy by the borrower—a luxury often inaccessible to those on active duty, particularly during deployment.⁸⁷ Where military borrowers cannot spend hours independently navigating the administrative hurdles of IDR and PSLF and reconciling conflicting information from servicers, they suffer direct financial hardship—the failures of the student loan servicing system can add thousands or tens of thousands of dollars to borrowers' loans.⁸⁸

The failures of the student loan servicing system can add thousands or ten of thousands of dollars to borrowers' loans.

The Secretary of Education can execute broad-based waivers to PSLF prerequisites in order to ease the burden on military borrowers.

The HEROES Act is not limited to individualized relief, permitting the Secretary to authorize waivers for classes of affected borrowers suffering from economic harm because of their student loans.⁸⁹ Accordingly, the Secretary

⁸⁵ See Petraeus, *supra* note 2.

⁸⁶ See, e.g., Gov't Accountability Office (GAO), *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers* (Sep. 5, 2018), <https://www.gao.gov/products/GAO-18-547>; U.S. Dep't of Educ., Off. of the Inspector Gen., *The Department's Communication Regarding the Costs of Income-Driven Repayment Plans and Loan Forgiveness Programs* (Jan. 31, 2018), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09q0003.pdf>; Office of Attorney General Maura Healy, *AG Healey Sues to Protect Public Service Loan Forgiveness* (Aug. 23, 2017), <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html>.

⁸⁷ Accurate servicing is even more critical for military borrowers because, "depending on the location of a military borrower[']s deployment, finding an opportunity to transact with the servicer in real-time can be difficult." *Overseas and Underserved*, *supra* note 17. This is certainly the case for deployed servicemembers, when operations can last weeks or months at a time with little or no communication with the outside world available. Submarines can spend six months under the ocean, never surfacing, and therefore not giving any of the sailors on board a chance to communicate with their student loan servicer. Even stateside, soldiers are often required to deploy to training missions at the Joint Rotational Training Center in Ft. Polk, Louisiana or at the National Training Center at Ft. Irwin, California that can cause difficulties communicating with their servicers. See also Frotman & Kantwill, *supra* note 51.

⁸⁸ See *2016 JAG School Remarks*, *supra* note 22.

⁸⁹ See 20 U.S.C. § 1098bb(b)(3) ("The Secretary is not required to exercise the waiver or modification authority under this section on a case-by-case basis").

should take immediate action to ensure that any military borrower who served on or after October 2007 is not penalized for a broken servicing system that has historically denied them access to one of the most vital consumer protections offered to military borrowers.⁹⁰

The Secretary should use the Defense Manpower Data Center to provide any active duty or veteran borrowers with qualified payment credit toward PSLF based on their time in service. In 2014, the Department of Justice and Federal Deposit Insurance Corporation took action against Navient, one of the largest federal student loan servicers, for failing to apply the interest rate cap mandated under the Servicemembers Civil Relief Act on active duty servicemembers' loans.⁹¹ Following this action, the Secretary of Education mandated a portfolio-wide review of military borrowers' loans, both current and historical, to ensure these borrowers were granted their interest rate cap. Servicers were able to complete this review by cross referencing accounts against the Defense Manpower Data Center, which includes dates of active duty service for all members of the military. The Secretary should use this same process to identify military borrowers with any type of federal student loan who served on active duty at any point after October 2007. The Secretary should then use her authority under the HEROES Act to ensure that these borrowers receive qualified payment credit for each month in which they served on active duty regardless of their payment status, repayment plan, or loan type. For example, a borrower who served on active duty for four years but remained in military deferment for the duration of his service should receive 48 months of qualifying payment credit toward PSLF.

The Secretary should grant immediate, retroactive loan forgiveness to any military borrower who served on active duty for at least 10 years by waiving the administrative requirements to apply for PSLF. Unlike automatic loan forgiveness through income-driven repayment, borrowers seeking to earn PSLF must affirmatively apply to have their loans forgiven.⁹² Borrowers report that the process of actually applying for loan forgiveness can stretch months and often requires additional paperwork.⁹³ After ensuring that all military borrowers receive credit toward PSLF as described above, the Secretary should then waive the administrative requirements associated with applying for PSLF. In effect, all military borrowers with federal student loans who have served for at least 120 months on active duty since October 2007 should have their loans immediately,

⁹⁰ Following the passage of the PSLF program, October 2007 was the first month in which a borrower could make a qualified payment.

⁹¹ See *supra* note 29.

⁹² Note that despite the fact that loan forgiveness under the PSLF program is not treated as income for tax purposes, the Department of Education has declined to automate this process.

⁹³ See, e.g., Consumer Fin. Prot. Bureau, Consumer Complaint 3712095 (June 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3712095>.

automatically forgiven.⁹⁴ By doing so, the Secretary can ensure that the HEROES Act is effectuated as intended—by relieving military borrowers of the economic hardship imposed by their service to our country.

After identifying PSLF-eligible military borrowers, the Secretary should review all subsequent ECFs and forgive the loans of veterans who continued in public service. Nearly a quarter of veterans continue to work in public service after leaving military service.⁹⁵ Many of these veterans are still pursuing PSLF and as such, may continue to submit ECFs. The Secretary should immediately, and then continuously, cross-reference the list of historical active duty military borrowers against outstanding civilian ECFs. Where borrowers have completed ten years of combined service, the Secretary should automatically forgive these loans. Where military borrowers have entered civilian service but have not yet completed ten years of service, the Secretary should notify these borrowers of their qualified payments to date and provide them with additional information about how to earn PSLF. For example, if a veteran has been identified and granted 48 months of qualifying payments for his time on active duty, the Secretary should look to see if he continued his public service. If the veteran became a civilian nurse and has submitted ECFs documenting 72 months of service (bringing his cumulative months of service to the required 120), the Secretary should forgive his loans immediately. If the veteran has less than 72 months in civilian service, the Secretary should provide him with an updated accounting of his qualified payments to date. Finally, if the veteran's current employment status or sector cannot be ascertained, the Secretary should inform him that his military service satisfied part of the requirements to earn PSLF and provide all information necessary should the borrower want to continue on track for PSLF.

⁹⁴ See *supra* note 90.

⁹⁵ See *supra* note 26.

Conclusion

The Public Service Loan Forgiveness program was created with the express purposes of ensuring that student loan borrowers can serve their communities and their country without spending a lifetime saddled with student debt. Unfortunately, a decade of mismanagement, poor oversight, and sloppy servicing has denied hundreds of thousands of borrowers their right to debt relief. For servicemembers, the unique constraints of military life only exacerbate this burden. The Secretary of Education can and must change this.

Servicemembers relied on the promise America made: after ten years of public service, including service to our country, their student debt would be forgiven. These men and women upheld their end of the bargain and sacrificed in service to our nation. The Secretary can now take action to ensure America upholds its end by providing these borrowers with credit for their service.

The Public Service Loan Forgiveness program was created with the express purpose of ensuring that student loan borrowers can serve their communities and their country without spending a lifetime saddled with student debt.



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