ESSAY

MITIGATING THE PSLF DISASTER: BUILDING A BORROWER-FRIENDLY STUDENT LOAN FORGIVENESS PROGRAM

Michael Slomovics†

In 2007, Congress promised student loan forgiveness to our teachers, public defenders, nurses, and other public servants. The bargain was simple: spend ten years in public service and your debt will be eliminated. Unfortunately for borrowers, the program turned out to be a disaster, with loan forgiveness denial rates as high as 99%. Individuals frequently spent a full ten years in public service with the understanding that their loans would be forgiven, only to be informed after a decade that they do not in fact qualify. This Essay proposes a revenue-neutral, bipartisan fix to the loan forgiveness program to ensure that borrowers no longer face this harsh reality. The proposal will also encourage more individuals to pursue public service and ensure that the program's benefits no longer disproportionately flow to highly paid professionals.

† J.D., Yale Law School, 2021. Thank you to Professor Amy Chua for overseeing this project and for your support, and thank you to the *Cornell Law Review* editors.

INTRODUCTION

Congress enacted the Public Service Loan Forgiveness ("PSLF") program with lofty goals in mind: to encourage college graduates to pursue public interest jobs in exchange for student loan forgiveness.[1] The program was intended to create a win-win dynamic. College graduates who choose to take advantage of the program would no longer have to worry about heavy debt loads, while the public would benefit as skilled college graduates filled positions of benefit to society. Though well-intentioned, PSLF has turned out to be an unmitigated disaster.

More than a decade after PSLF's implementation, borrowers continue to be deeply confused regarding how to maintain eligibility for PSLF and comply with the program's complex requirements.[2] The law suffers from poor drafting and mismanaged implementation,[3] leaving vulnerable borrowers on the hook for tens of thousands of dollars of student loans they thought would be forgiven. As of March 2019, a stunning 99% of PSLF applications for loan forgiveness had been

---

1 H.R. Rep. No. 110-210, at 39, 48–49 (2007); *See also* Alexa Díaz, *Federal student loan forgiveness program rejects almost everyone, again*, L.A. TIMES (Sept. 5, 2019), https://www.latimes.com/business/story/2019-09-05/most-student-loan-borrowers-rejected-by-loan-forgiveness-program [https://perma.cc/SNS8-UXXV] ("Americans who spend at least a decade in public service jobs and faithfully make their federal student loan payments shouldn't owe any more. That's the idea behind a student debt forgiveness program the Education Department launched under President George W. Bush.").

2 Danielle Douglas-Gabriel, *For student borrowers, confusion anew in the public-service loan-forgiveness program*, WASH. POST (Feb. 20, 2020), https://www.washingtonpost.com/education/2020/02/20/student-borrowers-confusion-anew-public-service-loan-forgiveness-program/ [https://perma.cc/TW6V-G7JZ].

3 Michelle Hackman, *Program to Relieve Student Debt Proves Unforgiving*, WALL ST. J. (May 7, 2019), https://www.wsj.com/articles/program-to-relieve-student-debt-proves-unforgiving-11557221400 [https://perma.cc/DK58-JCEX].

rejected.[4] Despite the media attention on the program's shortcomings since then, PSLF continues to fail: as of April 2021, about 98% of all loan forgiveness applications have been unceremoniously denied.[5] This result is especially harsh and unacceptable as individuals are only meant to apply for loan forgiveness *after* completing their mandatory ten years of public service.[6]

PSLF clearly isn't working as intended, and borrowers are paying an incredibly heavy price as a result. Moreover, in its current form, PSLF creates numerous perverse incentives: it rewards excessive student loan borrowing, penalizes those who reduce the cost of their college education, creates harmful lock-in effects for those who start in public interest jobs, and encourages colleges to keep raising sky-high tuition. This Essay proposes a revenue-neutral, bipartisan solution that will help mitigate many of these severe PSLF shortcomings, all while helping realize Congress' initial intent in enacting PSLF.

Part I provides an overview of PSLF, detailing how the program devolved into its current state of affairs. Part II details the Essay's recommendation that we redesign PSLF as a direct salary supplement to replace its current loan forgiveness design. This Part will explain the various severe shortcomings of PSLF and demonstrate how a salary supplement would significantly increase the effectiveness of the program. Part III considers tax and other changes that can further improve PSLF.

I

---

4 Cory Turner, *Congress Promised Student Borrowers A Break. Education Dept. Rejected 99% Of Them*, NPR (Sept. 5, 2019), https://www.npr.org/2019/09/05/754656294/congress-promised-student-borrowers-a-break-then-ed-dept-rejected-99-of-them [https://perma.cc/5BNZ-FU45].

5 *Public Service Loan Forgiveness Data*, FED. STUDENT AID https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data [https://perma.cc/7KHJ-MQ5Q] (last visited June 27, 2021). *See also* Adam S. Minsky, *Betsy DeVos Dumps Trump, Leaving Controversial Student Loan Legacy Behind*, FORBES (Jan. 8, 2021), https://www.forbes.com/sites/adamminsky/2021/01/08/betsy-devos-dumps-trump-leaving-controversial-student-loan-legacy-behind/?sh=75f101bf383f [https://perma.cc/XT9X-X3P3] ("However, PSLF still has a denial rate hovering at around 98%.").

6 *See* STUDENT BORROWER PROT. CTR. & AM. FED'N. OF TEACHERS, BROKEN PROMISES HOW THE DEPARTMENT OF EDUCATION'S FAILURES AND INDUSTRY'S ABUSES DENY FFEL BORROWERS PUBLIC SERVICE LOAN FORGIVENESS (2020), https://protectborrowers.org/wp-content/uploads/2020/12/BrokenPromises_FFEL.pdf [https://perma.cc/X6EX-RE5U].

THE PUBLIC SERVICE LOAN FORGIVENESS PROGRAM

As college students and recent graduates know all too well, the price of higher education in the United States is incredibly high.[7] Unsurprisingly, the amount of student debt Americans carry is likewise through the roof: current and former students "owe $1.6 trillion in federal student debt."[8] While this unfortunate reality impacts students regardless of career path, the costs of higher education and associated student loan debt are especially problematic for individuals pursuing public interest career paths. Despite the value such public interest jobs provide to society at large, public interest jobs tend to pay significantly less than do their non-public interest counterparts.[9] Without student loan assistance, many who pursue public interest jobs would be unable to meet their debt obligations.

Recognizing this situation—and with the hope of encouraging college graduates to pursue careers in public interest—Congress created the Public Service Loan Forgiveness program in 2007.[10] The idea was straightforward: work full-time for a qualified public interest employer, and after making 120 on-time monthly loan payments in a qualifying loan repayment program your remaining student loan balance would be forgiven.[11] Although in general loan forgiveness is considered taxable income under the Internal

---

7 *See, e.g.*, Amanda Ripley, *Why Is College in America So Expensive?*, THE ATLANTIC (Sept. 11, 2018), https://www.theatlantic.com/education/archive/2018/09/why-is-college-so-expensive-in-america/569884/ [https://perma.cc/AS4K-MBAS].

8 Josh Mitchell & Eliza Collins, *Biden Administration Weighs Forgiving Student Debt by Executive Action*, WALL ST. J. (Feb. 4, 2021), https://www.wsj.com/articles/biden-administration-weighs-forgiving-student-debt-by-executive-action-11612476685 [https://perma.cc/TZ62-M9Y4].

9 *See, e.g.*, Elizabeth Olson, *BigLaw Salary Bumps Exacerbate Public-Interest Pay Gap*, BLOOMBERG L. (June 25, 2018), https://news.bloomberglaw.com/us-law-week/biglaw-salary-bumps-exacerbate-public-interest-pay-gap [https://perma.cc/VH3C-2QKM]; *See also Staying on track while giving back*, CONSUMER FIN. PROT. BUREAU (June 2017), https://www.consumerfinance.gov/data-research/research-reports/staying-track-while-giving-back-cost-student-loan-servicing-breakdowns-people-serving-their-communities/ [https://perma.cc/ZK7F-2RGH] (explaining that "many public service fields traditionally offer lower wages").

10 Cory Turner, *Why Public Service Loan Forgiveness Is So Unforgiving*, NPR (Oct. 17, 2018), https://www.npr.org/2018/10/17/653853227/the-student-loan-whistleblower [https://perma.cc/3F82-QRUH].

11 *Public Service Loan Forgiveness (PSLF)*, DEP'T. OF EDUC., https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service [https://perma.cc/S7SN-DVM3] (last visited Feb. 2, 2021).

Revenue Code,[12] PSLF debt cancellation does not constitute taxable income,[13] significantly increasing the economic value of the associated loan forgiveness.

Borrowers eventually came to realize that the program was too good to be true. The first wave of applicants for PSLF loan forgiveness had their applications rejected at a rate of 99%.[14] These borrowers generally applied for loan forgiveness after having already completed ten years of public service under the expectation that their loans would be forgiven.[15] Clearly, such rejections were devastating to those who were counting on loan forgiveness. Indeed, as the Washington Post points out, "[t]housands have made borrowing or career decisions based on the promise of loan forgiveness"[16] only to find out years later that they may not qualify.

The path to PSLF loan forgiveness contains many potential hurdles, any one of which can prevent an applicant from receiving coveted loan forgiveness. For example, only loans made pursuant to the federal government's William D. Ford Direct Loan Program can be forgiven via PSLF.[17] Some loans—such as those made pursuant to the Federal Family Education Loan Program (FFELP)—do not themselves qualify for PSLF forgiveness.[18] Borrowers can, however, consolidate their FFELP loans into Direct Loans which would then allow them to qualify for PSLF loan forgiveness.[19]

Many borrowers, hoping to take advantage of PSLF, informed their loan servicers of their public interest

---

12 *Topic No. 431 Canceled Debt—Is It Taxable or Not?*, INTERNAL REVENUE SERV., https://www.irs.gov/taxtopics/tc431 [https://perma.cc/C72D-VMU9] (last visited Feb. 7, 2021).

13 *Public Service Loan Forgiveness (PSLF), supra* note 11.

14 Turner*, supra* note 4.

15 *See* STUDENT BORROWER PROT. CTR. & AM. FED'N. OF TEACHERS, *supra* note 6.

16 Danielle Douglas-Gabriel, *Why people are being denied public service loan forgiveness*, WASH. POST (Dec. 21, 2018), https://www.washingtonpost.com/education/2018/12/21/why-people-are-being-denied-public-service-loan-forgiveness/ [https://perma.cc/86MW-BM9R].

17 CONSUMER FIN. PROT. BUREAU*, supra* note 9, at 29.

18 *Id.*

19 *Id. See also* STUDENT BORROWER PROT. CTR. & AM. FED'N. OF TEACHERS, *supra* note 6. (explaining that "In 2007 when PSLF was created, there were two types of federal student loans—those directly originated by the Department of Education (Direct Loans) and those guaranteed by the federal government but originated by banks and other private-sector creditors through the Federal Family Education Loan Program (FFELP loans). Although a borrower must have a Direct Loan to qualify for PSLF, Congress created a path for all other federal student loan borrowers—including FFEL borrowers—to access PSLF by consolidating their FFELP loans into Direct Loans.").

employment.[20] Loan servicers are in essence intermediaries between the entity that awards the student loan (generally the U.S. Department of Education in the case of federal student loans) and the student borrowers.[21] These loan servicers "administer all aspects of federal student loan repayment, including answering borrowers' questions about the repayment of federal student loans and about available loan forgiveness programs."[22]

While such loan servicers should help borrowers consolidate their loans into Direct Loans once informed that the borrower is pursuing public interest, "borrowers complain that servicers withhold essential information about eligibility for PSLF."[23] Often, borrowers leave with the false impression that their loans are eligible for PSLF forgiveness and that each monthly payment is bringing them one month closer to total loan forgiveness.[24] This can go on for years, with borrowers diligently making their requisite payments only to eventually find out that they have made no progress at all.[25]

Those who initially took out Direct Loans, or consolidated their ineligible loans into Direct Loans, still face additional obstacles to PSLF success. In order to be eligible for PSLF, borrowers must opt-in to a repayment plan that qualifies for PSLF.[26] Generally, only income-driven repayment plans qualify for loan forgiveness.[27] The Department of Education explains that "[a]n income-driven repayment plan sets your monthly student loan payment at an amount that is intended to be affordable based on your income and family size."[28]

There are four income-driven repayment plans currently available: (1) Revised Pay As You Earn Repayment Plan (REPAYE); (2) Pay As You Earn Repayment Plan (PAYE); (3) Income-Based Repayment Plan (IBR); and (4) Income-Contingent Repayment Plan (ICR).[29] These plans generally set the required monthly payment amount as equal

20 CONSUMER FIN. PROT. BUREAU, *supra* note 9, at 29.
21 *Id.* at 28.
22 *Id.*
23 *Id.* at 29.
24 *Id.*
25 CONSUMER FIN. PROT. BUREAU, *supra note 9,* at 29.
26 *Id.* at 32.
27 *Id.*
28 *If your federal student loan payments are high compared to your income, you may want to repay your loans under an income-driven repayment plan.*, DEP'T. OF EDUC., https://studentaid.gov/manage-loans/repayment/plans/income-driven [https://perma.cc/2AY2-YK3N] (last visited Feb. 9, 2021).
29 *Id.*

to a specified percentage of the borrower's discretionary income.[30] Borrowers must apply in order to be enrolled in an income-driven repayment plan.[31]

Unfortunately, borrowers have reported substantial difficulty in complying with this requirement. Some borrowers state that their loan servicers never informed them of PSLF's various requirements, even after the borrowers informed the servicers that they were working in a public interest field.[32] Others specifically notified their loan servicers that they wished to have their loans forgiven via PSLF, yet the loan servicers still enrolled them into a repayment plan that wouldn't qualify for PSLF.[33] Without having enrolled in a qualified repayment plan, these borrowers were making no progress in their path to loan forgiveness.

Following a public outcry and heavy media attention on PSLF's failings, Congress enacted the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program in 2018.[34] This program was designed to provide relief to one specific subset of those for whom PSLF wasn't helping: those who met all PSLF requirements *except* that they were enrolled in the wrong repayment plan to qualify for PSLF relief.[35] Congress allocated $700 million to fund TEPSLF[36] in order to provide relief to such borrowers. In contrast to PSLF, the TEPSLF program is temporary in nature and provides relief to borrowers only "on a first-come, first-served basis."[37]

Despite the limited scope of the TEPSLF program—which itself is designed to mitigate only one failing of the larger PSLF program—TEPSLF has been off to a wildly unsuccessful start. Between May 2018 and May 2019, 99% of all TEPSLF applications were rejected.[38] Most applications were rejected

30 *Id.*

31 *Id.*

32 CONSUMER FIN. PROT. BUREAU, *supra* note 9, at 33.

33 *Id.*

34 Turner, *supra* note 4.

35 Jillian Berman, *All You Need to Know About Student-Loan Forgiveness*, WALL ST. J. (Dec. 16, 2018), https://www.wsj.com/articles/all-you-need-to-know-about-student-loan-forgiveness-11545015840 [https://perma.cc/BF3N-K9TW] ("Congress authorized a temporary expansion of PSLF earlier this year for borrowers who met all of the program's other requirements but were using certain nonqualifying repayment plans."). *See also* Turner, *supra* note 4.

36 U.S. GOV'T ACCOUNTABILITY OFFICE, PUBLIC SERVICE LOAN FORGIVENESS (2019), https://www.gao.gov/assets/gao-19-595.pdf [https://perma.cc/N6ZF-ZGVG].

37 *Id.* at 1.

38 *Id.* at 11. Although the TEPSLF approval rate has improved slightly—recent data shows a rejection rate of about 94%—the vast majority of applicants

because the borrower had not first applied and been rejected by PSLF.[39] The Department of Education's initial rules required a prior PSLF rejection as a prerequisite for TEPSLF eligibility.[40] Even with the availability of TEPSLF, borrowers face long odds on the road to loan forgiveness.

Clearly, domestic policy with respect to public service loan forgiveness has been failing millions of vulnerable borrowers. It is time to redesign the Public Service Loan Forgiveness program to ensure it meets the needs of our indebted public servants. Given the closely divided nature of our government, it is especially important to consider policy proposals with bipartisan appeal. This Essay's proposal has the potential to obtain buy-in from both Democrats and Republicans, as it maintains the existing cost structure and underlying intent of the PSLF program while significantly improving its design and implementation.

II
PSLF REFORM

This Essay proposes a simple, revenue-neutral change to PSLF that will significantly improve the program and mitigate many of its current downsides. Rather than structuring PSLF as a student loan forgiveness program, PSLF should instead be structured to provide direct salary supplements to those who work in public interest jobs and meet the program's other requirements. Importantly, the adoption of this proposal would not require any additional spending; it would simply take the money that is currently spent on PSLF and distribute it in the form of salary supplements instead of distributing it in the form of loan forgiveness.

To illustrate, assume for simplicity that PSLF is projected to provide a total of $30,000 of student loan forgiveness for each current eligible program participant. Rather than distributing this $30,000 average to each participant in the form of loan forgiveness at the end of ten years of public service (as would be the case under PSLF as it currently exists), PSLF should instead supplement each worker's salary to the tune of $3,000 per year for the first 10 years of that worker's public service.[41]

---

continue to be denied. *See also* STUDENT BORROWER PROT. CTR. & AM. FED'N. OF TEACHERS, *supra* note 6, at 8.

39 STUDENT BORROWER PROT. CTR. & AM. FED'N. OF TEACHERS, *supra* note 6, at 12–13.

40 *Id.* at 7–8.

41 For simplicity, this example ignores considerations such as the time value

Although the change above appears to be inconsequential at first glance, in reality this simple change would significantly improve many aspects of PSLF. Structuring PSLF as a salary supplement would significantly reduce the number of individuals who labor under the false impression that they are eligible for PSLF, only to be turned down after ten years of public service; it would eliminate PSLF's incentivization of excessive college spending and borrowing at the taxpayers' expense; it would reduce the harmful employment lock-in effects PSLF currently creates; it would help encourage more individuals to pursue public interest in line with congressional intent; it would reduce the effectiveness of political interference in the administration of PSLF; and it would eliminate PSLF's contribution to the ever-increasing costs of higher education.

The remainder of this Essay will outline the various problems that PSLF creates and discuss how the Essay's salary supplement proposal would eliminate or at least significantly mitigate many of these problems.

A. End the Road to Nowhere

The biggest problem with PSLF is the large number of individuals who diligently make payments on their student loans for months and years on end with the expectation of loan forgiveness, before eventually finding out that they were not meeting one or more PSLF requirements. These borrowers mistakenly think they are on the road to loan forgiveness, only to be dealt the devastating news that they had been pursuing a road to nowhere for years.

Consider the experience of Heather Austin. Heather spent more than ten years educating students as a school teacher.[42] She and her husband, Matthew, were eagerly awaiting the day Heather's student loans would be forgiven under the PSLF program.[43] Expecting to receive a letter notifying them of loan forgiveness, they instead received a letter informing them that *none* of their payments over the course of ten years had counted towards their PSLF requirements.[44] Because those

of money and differences in the number of people who would participate in PSLF under this Essay's proposal as compared to the number who currently participate in PSLF. Of course, an actuarial calculation would be necessary before implementing this proposal to determine how large the salary supplement should be to ensure revenue neutrality. Regardless, the Congressional Budget Office should be able to reach such determination without substantial difficulty.

42 Turner, *supra* note 4.

43 *Id.*

44 *Id.*

payments were made pursuant to an ineligible repayment plan Heather had made no progress towards her goal of loan forgiveness.[45]

Heather was understandably so frustrated with her experience that she chose not to participate in the NPR interview.[46] Instead, only Matthew discussed the couple's story.[47] Matthew spoke of how, during Heather's pregnancy, the couple made plans to take a vacation once their child reached the age of ten.[48] They picked that age because that was when the couple projected they would finally be free of student loans thanks to PSLF.[49] Of course, that's not how their story turned out, owing to the way in which PSLF was designed. Matthew described his experience as "Kafkaesque," explaining "[i]t's like we're just stumbling in the darkness."[50]

Imagine instead how Heather and Matthew Austin's story might have turned out differently had PSLF initially been designed in accordance with this Essay's recommendation. Rather than only benefitting from potential loan forgiveness at the conclusion of ten years of public service, PSLF would instead provide a direct salary supplement to eligible borrowers immediately upon the commencement of a public service job. Wishing to obtain such a salary supplement, Heather would presumably have applied for the benefit as soon as she started her teaching job, rather than applying only after ten years of working.

She still would have received a disappointing letter stating that she did not meet the PSLF eligibility requirements, as her repayment plan still would not have qualified. But she would have been made aware of this problem immediately upon the start of her job, rather than at the conclusion of ten years of public service. She could then quickly take mitigating steps to ensure that she is enrolled in the correct, qualifying repayment program by simply applying for the correct repayment plan.

After this quick mishap, Heather would likely have been able to meet the PSLF requirements, and she would benefit from the program with each passing month. At the conclusion of her first ten years of teaching she would have accumulated PSLF's full benefits (instead of being told at the end of ten years

---

45 *Id.*
46 *Id.*
47 *Id.*
48 *Turner*, *supra* note 4.
49 *Id.*
50 *Id.*

that she is ineligible for any benefits at all). Perhaps the couple would even have been able to take their vacation before their child reached age ten, comfortable with spending some discretionary money as they watched their student loan balance go down each month.

Sadly, Heather and Matthew Austin are far from alone in their struggles with PSLF, highlighting the importance of restructuring PSLF in a borrower-friendly manner. Kelly Finlaw, also a schoolteacher, testified as to her experience with PSLF: "I did what I was asked to do. I called. I made my payments on time. I paid every month. I was lied to several times. Directly lied to. In fact, I was told several times to do things that in the end put me in a worse place."[51]

A Washington Post opinion piece describes PSLF's failings as follows:

> Over and over again, borrowers report that the companies servicing their loans misinformed them. They weren't told about consolidation plans that would make their loans eligible for relief. Payments were misapplied, knocking them off track without borrowers' knowledge. There were seemingly thousands of ways to get this wrong, and almost no way to get it right.[52]

PSLF's problems also impact our military members. A report by the Consumer Financial Protection Bureau details the experience of one member of the military who was not informed by his loan servicer for years that his loans were not eligible for PSLF.[53] The borrower was only notified of the need to consolidate his loans for PSLF eligibility after leaving military service.[54] His progress to loan forgiveness was needlessly set back:

> 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. PSLF is supposed to provide reward those who serve the public. . . . [M]y military service, in which my leg function was sacrificed, did not count for anything [toward PSLF]. This is contrary to the alleged policy for which the PSLF

---

51 Helaine Olen, Opinion, *What Betsy DeVos did to the public service debt forgiveness program isn't 'regrettable.' It's wrong.*, WASH. POST (Sept. 20, 2019), https://www.washingtonpost.com/opinions/2019/09/20/what-betsy-devos-did-public-service-debt-forgiveness-program-isnt-regrettable-its-wrong/ [https://perma.cc/C3GP-9KDD].

52 *Id.*

53 CONSUMER FIN. PROT. BUREAU, *supra* note 9, at 30.

54 *Id.*

program was created and it is insulting.[55]

Structuring PSLF as a monthly salary supplement would ensure that borrowers receive immediate feedback as to whether or not they are fully compliant with all PSLF requirements. No longer would borrowers labor for months, years, or even a decade under the misimpression that they are making progress towards loan forgiveness. Borrowers who are not fully compliant will have the knowledge, opportunity, and incentive to take corrective action, which they will often be able to take without significantly setting back their progress towards loan forgiveness.

Designing a loan forgiveness program that creates such borrower incentives is especially important considering the incentives the loan servicers currently have with respect to the PSLF program. While there are several loan servicers that the Department of Education uses,[56] only one—the Pennsylvania Higher Education Assistance Agency—is the designated loan servicer for borrowers aiming to take advantage of PSLF.[57] Consider the conflict of interest this creates when a borrower expresses an interest in pursuing PSLF, as highlighted in a U.S. Government Accountability Office (GAO) report:

> In addition, consolidations can help make borrowers eligible for debt relief programs such as Public Service Loan Forgiveness (PSLF), and all loans that Education certifies for PSLF are transferred to one servicer. Because servicers are not compensated for their loss when a loan is transferred, in effect, they are paid less than if they were able to keep all of their assigned loans. Education officials acknowledged that the lack of compensation for transferred loans could be a disincentive for servicers to counsel borrowers about loan consolidation and PSLF. They said that they believe their oversight efforts discourage servicers from acting on this potential disincentive. They also said they do not currently account for any transfers in servicer compensation because it is complicated to include them when they affect a relatively small portion of the overall loan portfolio. Education officials said they want to keep the performance metrics and related compensation simple and straightforward.[58]

---

55 *Id.* at 30-31.

56 For a list of current loan servicers, see *Who's My Student Loan Servicer?*, U.S. DEP'T. OF EDUC., https://studentaid.gov/manage-loans/repayment/servicers [https://perma.cc/Q6NA-SK67] (last visited Feb. 20, 2021).

57 CONSUMER FIN. PROT. BUREAU, *supra* note 9, at 28.

58 U.S. GOV'T ACCOUNTABILITY OFFICE, FEDERAL STUDENT LOANS EDUCATION

A cynic would suggest that student loan servicers purposefully thwart borrowers' pursuit of loan forgiveness under PSLF by making it more difficult for borrowers to both understand PSLF requirements and take steps to maintain eligibility. Even without ascribing such malevolent behavior to loan servicers, individuals and entities alike obviously respond to incentive structures, and the above-described incentive structure certainly does not encourage servicers to help borrowers in their pursuit of PSLF. Regardless of the ascribed reason, borrowers can end up owing "thousands of dollars that they might otherwise never have had to pay"[59] as a result of delays in meeting the various PSLF requirements. There is also good reason to doubt that the Department of Education effectively manages the conflict referenced above give the government's difficulty in effectively administering PSLF in general.

Currently, with many borrowers only applying for PSLF eligibility after ten years of service, the loan servicers' incentives may be stronger than any countervailing borrower incentives to enroll in PSLF. Under this Essay's proposal, however, with borrowers fully informed that they are not compliant with PSLF early in their careers, they will have every incentive to ensure PSLF eligibility. This would make it significantly more likely that borrowers will insist on being enrolled in PSLF-eligible plans.

B. Reduce Political Interference in the Administration of PSLF

Some have argued that PSLF's failings can be attributed to political interference in the administration of the program.[60] Structuring PSLF as a salary supplement would reduce the effectiveness of any potential future political interference, helping borrowers who would otherwise be vulnerable to the whims of future presidential administrations.

One commentator argues that the Trump Administration intentionally caused PSLF to fail:

"Secretary DeVos may have failed year after year to kill this

COULD IMPROVE DIRECT LOAN PROGRAM CUSTOMER SERVICE AND OVERSIGHT 23–24 (2016), https://www.gao.gov/products/GAO-16-523 [https://perma.cc/K4TG-PXLJ].

59 CONSUMER FIN. PROT. BUREAU, *supra* note 9, at 41.

60 *See, e.g.*, *Devos To Defend Indefensible Budget That Kills Public Service Loan Forgiveness Program*, ALLIED PROGRESS (Feb. 28, 2020), https://alliedprogress.org/news/devos-to-defend-indefensible-budget-that-kills-public-service-loan-forgiveness-program/ [https://perma.cc/8S5L-67N3].

> bipartisan loan forgiveness program, but that hasn't stopped her from making it as hard as possible for public service professionals to qualify for it," said Derek Martin, director of Allied Progress. "The Trump administration has no good excuse for denying these hard-working public servants the relief they deserve for their sacrifices, but following the money reveals why they're doing it. . ."[61]

In a more measured piece, the Los Angeles Times' Editorial Board suggests political considerations as a possible reason as to why PSLF has been so unsuccessful.[62]

While there does not appear to be substantial direct evidence that the Department of Education under President Trump intentionally interfered in the administration of PSLF for political reasons (and the adjudication of whether it did is not necessary for this Essay), the Trump Administration has certainly indicated that it does not support PSLF. The Trump Administration's budget included the complete elimination of the PSLF program.[63] Former United States Secretary of Education Betsy DeVos stated:

> The administration feels that incentivizing one type of work and one type of job over another is not called for. And we have a demand in our over 7 million jobs going unfilled today, and favoring one type of pursuit over another type of pursuit philosophically doesn't line up with where we are.[64]

Imagine a future presidential administration that has similar objections to PSLF combined with a willingness to interfere with the honest implementation of the program. Since the law is poorly drafted,[65] there would likely be significant opportunity for a hostile administration to make it difficult for borrowers to achieve loan forgiveness. As one way

---

61 *Id.*

62 Editorial, *Why is it so hard for Betsy DeVos to provide debt relief and loan forgiveness to students?*, L. A. TIMES (Jan. 2, 2020), https://www.latimes.com/opinion/story/2020-01-02/betsy-devos-debt-relief-loan-forgiveness-students [https://perma.cc/ZN9L-NWVG] ("There's nothing new or surprising about DeVos slow-walking or trying to undo policies laid down by the previous administration, but she has lost round after round in court after she bungled the required procedures for changing the Obama-era rule.").

63 Paul Blest, *Trump's Budget Cuts Could Saddle Students With Billions More in Debt*, VICE NEWS (Feb. 11, 2020), https://www.vice.com/en/article/m7q37x/trumps-budget-cuts-could-saddle-students-with-billions-more-in-debt [https://perma.cc/4RRM-AVD8].

64 Zack Friedman, *DeVos: Here's Why We Want To End Student Loan Forgiveness Program*, FORBES (Mar. 8, 2020), https://www.forbes.com/sites/zackfriedman/2020/03/07/student-loans-forgiveness-devos/?sh=63465b79184c [https://perma.cc/2MXN-3JMT].

65 Hackman, *supra* note 3.

of interfering, an administration could change the Department of Education's interpretation of what qualifies as an eligible public service job.

In fact, this was the very basis of a recent lawsuit by the American Bar Association ("ABA") against the Department of Education.[66] ABA alleged that the Department of Education first designated certain employment as eligible for PSLF, only to later renege after years.[67] Of course, this left borrowers who had relied on the Department of Education's earlier assurances with a substantial amount of uncertainty as to whether they would achieve loan forgiveness. While any similar future administrative actions can likewise be challenged in court, the legal process is long, difficult, and expensive, with no guarantee of success. Keep in mind that even without any active hostility, almost all PSLF applications have been denied. An administration that is motivated by philosophical disagreements with PSLF would likely have ample opportunity to interfere with borrowers' ability to achieve loan forgiveness.

Consider a borrower who has completed nine years of qualifying, timely loan repayments pursuant to PSLF and is looking forward to finally achieving loan forgiveness. The above-described new administration is elected and, motivated by its anti-PSLF ideology, denies that the borrower has actually met the program's requirements. The borrower will have received no benefits under PSLF and would be at risk of never receiving any benefits, as currently benefits are only finally approved and distributed upon the completion of ten years of service.

If, instead, the salary supplement advocated for in this Essay were in effect, the borrower would have already received nine years of salary supplements before the hostile administration took over. When the new administration takes over and denies the borrower continuing benefits, all that is at risk is the final one year of PSLF payments remaining. The borrower could, of course, still challenge the administration's determination with respect to her last year of PSLF payments.

---

66 *ABA, Education Department settle student loan forgiveness case*, AM. BAR ASS'N. (Feb. 19, 2020), https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/aba—education-department-settle-student-loan-forgiveness-case/ [https://perma.cc/HJ29-R8FF].

67 *Id.* ("The ABA claimed that the department and its contractor, FedLoan Servicing, hurt employees of some nonprofit groups by initially telling them they qualified for loan forgiveness, then reneged on those promises years later. Kelly agreed, ruling that the Education Department's rule changes had 'an immediate and significant impact on their ability to plan their careers and finances.").

But she is assured to receive at least 90% of the benefits promised to her, instead of worrying about possibly receiving 0% of benefits as would be possible under the current loan forgiveness structure of PSLF.

Additionally, having received a salary supplement for nine years would likely be helpful for the borrower in litigation. The salary supplement would constitute direct evidence that previous administrations had found the borrower to be fully complying with the various PSLF requirements, making it more difficult for a future administration to argue that the borrower had not been complying. Structuring PSLF as a salary supplement would help insulate borrowers from the threat of future administrative hostility.

C. End the Incentive to Borrow Excessively for College

A major problem with PSLF is its incentivization of excessive college spending at the taxpayer's expense. Those who enter college with the plan of pursuing PSLF will not be particularly cost-sensitive when deciding in which college to enroll. The monthly payments borrowers make during PSLF are income-based; the payments are based not on the total loan balance outstanding, but rather on the borrower's income at the time of repayment.[68] Once the borrower meets all PSLF eligibility requirements, the borrower will (at least theoretically) achieve full loan forgiveness. There is currently no limitation on the maximum amount of loan forgiveness a borrower can obtain under PSLF.[69]

In the ordinary course, with college students responsible for the charges associated with college attendance, students consider price as one of the primary factors in choosing their colleges.[70] For students who know that they are pursuing PSLF, however, there is no reason to be price sensitive. The

---

68 *See supra* notes 25–30 and accompanying text.

69 CONG. BUDGET OFFICE, REDUCE OR ELIMINATE PUBLIC SERVICE LOAN FORGIVENESS (2020), https://www.cbo.gov/budget-options/56822 [https://perma.cc/W8MB-CKZ2] ("Neither IDR plans nor the PSLF program impose a limit on the amount of debt that can be forgiven.").

70 Allison Pohle, *The Coronavirus Pandemic Is Making College Students Question the Price of Their Education*, WALL ST. J. (Aug. 28, 2020), https://www.wsj.com/articles/the-coronavirus-pandemic-is-making-college-students-question-the-price-of-their-education-11598619781 [https://perma.cc/C3FY-2Y43] ("While students consistently make their college decisions based on the academic reputation of the school, cost and job opportunities for graduates, according to the annual Freshman Survey from the Higher Education Research Institute at the University of California Los Angeles, life outside of the classroom has become more critical in the decision-making process.").

additional costs associated with enrolling in the most expensive college option available will not be borne by the student borrower. Rather, once the student completes the required ten years of public service, the United States taxpayers step in to relieve the student of the student's entire debt load.

Of course, the problem with this is not that the student receives financial assistance with their student debt—after all, helping students with their student loans is the entire purpose of PSLF. Rather, the problem is that PSLF encourages and rewards those who spend as much money as possible on their college education, even if the additional amounts spent are in no way justified by the incremental value of the more expensive college options. For those confident that they will achieve PSLF loan forgiveness, it can be perfectly economically rational to pay another $10,000 per year in college tuition even if such additional spending will only provide the student with $1,000 per year in additional value. This is especially troubling because, according to the director for education and skills at the Organization for Economic Cooperation and Development, "Spending per student is exorbitant, and it has virtually no relationship to the value that students could possibly get in exchange."[71] Meanwhile, the American taxpayer is on the hook for all additional amounts spent.

This Essay's salary supplement proposal would eliminate such poor incentives, leading students to make more efficient, price-sensitive college enrollment decisions and ensuring that the American taxpayer will no longer bear the burden of excessive student loan borrowing. The salary supplement proposed in the Essay is a flat rate benefit—no matter how much the student has borrowed, the salary supplement remains the same.

Students considering paying additional money for a more expensive college option will do so only if the perceived benefits of the more expensive option justify the increased cost. While currently the amount of PSLF loan forgiveness one receives rises as one's student loan balance upon graduation rises, a salary supplement would ensure that all participants receive the same benefit amount irrespective of loan amount. Students would thus have every incentive to reduce their college costs, willing to pay more only if the added costs for the more expensive college option are justified by the added benefits. The American taxpayer will no longer be required to

71 Ripley, *supra* note 7.

subsidize and encourage unjustified student borrowing, and PSLF's benefits will no longer be disproportionately allocated to heavy student loan borrowers.

Aside from the above disadvantages, incentivizing students to spend as much as possible on college can have other spillover effects. When one class of college enrollees is not impacted by a college's decision to increase its tuition, it is easier for the college to raise tuition across the board for all enrollees. While there are many factors that contribute to the high cost of college education in the United States,[72] the unlimited loan forgiveness that is associated with PSLF may be one factor that contributes to rising tuition.[73] Structuring PSLF as a salary supplement will eliminate the incentive the program currently provides to spend excessively on college.

D. More Effectively Encourage Individuals to Pursue Public Service

While Congress created PSLF to encourage college graduates to pursue public service and reward those who do so, PSLF's design means that some college graduates have no program incentive to pursue public service. As discussed in the previous subpart, the amount of PSLF benefits a graduate can expect to receive depends on the amount of student loans the borrower has. In addition to incentivizing excessive borrowing for those who know they wish to pursue PSLF when they enroll in college, this also means that those who graduate with minimal loans will not be incentivized to pursue public service. For those with a low enough student loan balance relative to expected salary, PSLF does not provide any benefits at all.

Consider a college student who chooses to attend a local community college for two years while continuing to live at home with her parents. The student works throughout part-time and completes her associate's degree with minimal debt. The student then attends a low-cost institution to obtain her bachelor's degree, graduating with a total debt load of only

---

72 *See id.*

73 *See, e.g.*, Erica L. Green, Luke Broadwater & Stacy Cowley, *Student Loan Cancellation Sets Up Clash Between Biden and the Left*, N.Y. TIMES (Dec. 10, 2020), https://www.nytimes.com/2020/12/10/us/politics/biden-student-loans.html [https://perma.cc/5EZL-79JP] ("Without a parallel effort to curb tuition growth, one-time debt relief could actually lead to more higher-education debt in the future as students take on larger loans, hoping the government would at some point wipe them clean, a 'moral hazard' that often accompanies one-time interventions.").

a few thousand dollars. Presumably, a hardworking, cost-conscious, and motivated student like this is exactly the type of person Congress would be interested in incentivizing to pursue public service.

The current design of PSLF, however, ensures that this student will receive little to no PSLF benefit if she chooses to pursue public service. At the end of ten years of public service and her corresponding participation in an income-based repayment plan, the student will likely have directly paid off all her debt, leaving nothing for PSLF to forgive. Knowing this, the student will not have any PSLF-related incentive to pursue public service in the first place.

Congress may have intended to generally encourage students to pursue public interest, but in reality the program Congress created only incentivizes public service amongst those who graduate with relatively high debt loads. Indeed, those who do not attend graduate or professional school after undergrad are unlikely to receive much (if anything) in PSLF benefits.[74] The median debt load for those with only undergraduate degrees—about $30,000—will often be paid up by the borrower within ten years of graduation; loan forgiveness after ten years will often be no benefit at all.[75]

Under this Essay's proposal the student described above—and those with undergrad degrees generally—will still be incentivized to pursue public service. Even with minimal debt, the salary supplement would be available in full for the student's entire ten years of public service. The salary supplement benefit is simply untethered to debt load, unlike PSLF's loan forgiveness design. There isn't good reason to only encourage public service for individuals who have high amounts of debt. Structuring PSLF as a salary supplement ensures that all graduates—including those with limited to no debt—are appropriately incentivized to pursue important public service work in line with congressional intent.

E. End the Disproportionate Subsidization of Highly Paid Employees

PSLF's loan forgiveness design ensures that the largest beneficiaries of the program are highly paid professionals—

74 Josh Mitchell, *U.S. Student-Loan Forgiveness Program Proves Costly*, WALL ST. J. (Nov. 20, 2015), https://www.wsj.com/articles/u-s-student-loan-program-proves-costly-1448042862 [https://perma.cc/B523-5DH2].

75 *Id.* ("College graduates who don't go on to grad school will see limited benefits because they start out owing a median of about $30,000—a sum often paid off within 10 years.").

arguably those who least need the program's benefits. As discussed in the previous subpart, many students who do not further their education after their undergraduate degrees may receive limited PSLF benefits. By contrast, those who take on high debt loads in the pursuit of more advanced education will tend to receive large amounts of loan forgiveness. These same graduates of advanced degree programs also tend to make very high salaries over the course of their careers. While PSLF "was designed to encourage young Americans to pursue traditionally hard-to-fill jobs: public defenders, social workers, teachers and modestly paid doctors in underserved areas," the program design ensures that others are the primary beneficiaries.[76]

As one example, consider what has been called the doctors' loophole.[77] Doctors borrow large amounts of money to attend medical school, with average debt loads in the range of $200,000.[78] After graduation, physicians tend to make relatively little money during their residency, which can last for as long as eight years.[79] Medical school graduates have increasingly been pursuing employment at nonprofit hospitals, which makes them eligible for PSLF.[80]

During residency, the amount of loans these doctors repay is minimal, since the income-based repayment plans set the required monthly payment based on the (low) salary earned. Once the doctor makes ten years of eligible payments, the full remaining loan balance can be forgiven. Some estimate that eligible doctors will have as much as 80% of their original loan balances forgiven under PSLF.[81] Given the large amounts of money that doctors earn upon the completion of residency, there is reason to question whether such significant loan forgiveness is justified.

In contrast, under this Essay's salary supplement proposal the largest beneficiaries of PSLF will no longer be highly paid, highly indebted working professionals. Because the salary supplement is untethered to the amount of debt owed, those with high amounts of debt and high expected lifetime earnings will no longer receive greater benefits. With a salary supplement the doctor's loophole—and any similar unintended consequences of PSLF—will no longer exist.

---

76 *Id.*
77 *Id.*
78 *Id.*
79 *Id.*
80 Mitchell, *supra* note 74.
81 *Id.*

F. Eliminate PSLF Lock-in Effects

Because PSLF benefits are only distributed at the end of ten years of public service, those who work in public service for fewer than ten years receive no benefits. This causes harmful lock-in effects for those who begin working in public service after graduating from college. Consider a teacher who works for a public school for five or six years after graduation, before ultimately deciding that she would rather pursue a different career path. Perhaps teaching was not what she imagined it would be and she is seeking a new path, or maybe she wants to start her own business selling an innovative product or providing a much-needed service.

PSLF's design will create every incentive for the teacher to remain teaching until she completes ten years of service, if there is any way at all that she can do so. If she leaves after five years she won't receive half of her PSLF benefits; she will receive nothing. Thus, there is a major lock-in effect keeping people in their public service jobs once they start, even if they later decide that public service isn't the right path for them.

While some may view this as a positive, as PSLF's design encourages individuals to continue with their public service path for a minimum of ten years, there are significant downsides to such lock-in effects. The teacher who feels forced to complete years of additional teaching instead of pursuing her new goals is unlikely to be a particularly effective or pleasant presence in the classroom. Additionally, the teacher trapped in a job she doesn't like is of course negatively affected by such circumstances. More generally, PSLF should be helping those who have an independent desire to pursue public service, not trapping those who began public service on a path that they no longer wish to remain on.

While PSLF's all-or-nothing structure creates lock-in effects for those who begin working in public service, the structure also disincentivizes the pursuit of public service for those who are unsure about whether to pursue PSLF in the first place. Consider a college graduate who is deciding between a private sector job on the one hand and a public service job on the other. The college graduate may be interested in starting out in public service for a few years but is unsure about whether he wants to remain in public service for a full decade. This is exactly the sort of person for whom PSLF could make a huge difference. PSLF's benefits can help make up for the salary differential between the private sector and public service job, encouraging the college graduate to pursue public service.

This incentive is dramatically reduced, however, by the all-or-nothing approach to PSLF. When making his decision, the college graduate will understand that the PSLF benefits will only be available to him if he completes a full decade of public service. As his uncertainty about whether he will remain in public service for ten years increases, the value he will place on the potential PSLF benefits decreases. If he knows he will only spend several years in public service, PSLF will offer him no benefits at all. Yet there is little reason to only incentivize those who know they will pursue public service for a full ten years while offering no incentive to those who want to pursue public service for seven or eight years.

This Essay's salary supplement proposal easily solves these problems. The teacher who spent five years in public service will already have received five years of salary supplements. There would be no lock-in effect as the teacher would not be required to give up any of her previous benefits if she decides to start a business and leave her teaching job. She would remain completely free to pursue her goals. Similarly, the college graduate who is unsure about career paths will be incentivized to at least start out in public service, even if he is not sure that he wants to remain there long term. He will understand that, even if he leaves after a few years, he will still receive PSLF benefits commensurate with his time in public service. Of course, if he subsequently chooses to remain for the full ten years, he will receive the full ten years of benefits. A salary supplement better incentivizes individuals to pursue public service in line with congressional intent.

Structuring PSLF as a salary supplement would also help another class of borrowers: those who fully intend on completing ten years of public service but are unable to do so due to circumstances outside of their control. For example, consider a public service worker who is laid off or whose employer closes down after the worker has completed seven years of eligible public service. This worker is at significant risk of not receiving *any* PSLF benefits if she is unable to find other eligible public service employment. Imagine the stress and worry this feature of PSLF causes countless public servants as they pursue debt forgiveness over the course of years of employment. Structuring PSLF as a salary supplement instead, however, provides assurance to our public servants that no matter what happens, they will at least receive benefits commensurate with the number of years of public service they have already completed.

Similarly, workers who are concerned that Congress may end PSLF at some point in the future would be reassured by a salary supplement. The Department of Education's own website states "We can't make any guarantees about the future availability of PSLF. The PSLF Program was created by Congress, and Congress could change or end the PSLF Program."[82] Those earning a salary supplement will at least be assured that the amounts paid to them each month will not be rescinded.

G. Allow Borrowers to Make Earlier Progress on Loan Repayment

The structure of PSLF encourages borrowers to make only the minimum required payment each month and can even penalize borrowers who choose to pay more than the minimum monthly payment. As the Department of Education points out, borrowers who pay more than the minimum amount owed in a given month will not achieve loan forgiveness any sooner than ten years; all borrowers must make a total of "120 separate monthly payments" to qualify for loan forgiveness.[83] Paying more than the minimum amount actually has the potential to backfire according to the Department of Education: "If you consistently pay more than you have to, it will reduce the amount forgiven once you reach the 120 payments necessary."[84]

Borrowers who live below their means so that they can pay more than their minimum payment in a given month should be rewarded, not discouraged from doing so. PSLF incentivizes borrowers to pay exactly the minimum amount required each month and not a penny more. This prevents borrowers from making any additional progress towards loan repayment; borrowers are stuck repaying the minimum amount for a full ten years. This is an unfortunate side effect of PSLF's designs,

---

82 *Public Service Loan Forgiveness FAQ*, DEP'T. OF EDUC., https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/questions [https://perma.cc/2N63-95CZ] (last visited Feb. 17, 2021).

83 *If I pay more than my scheduled monthly student loan payment amount, can I get Public Service Loan Forgiveness (PSLF) sooner than 10 years?*, DEP'T OF EDUC., https://studentaid.gov/help-center/answers/article/can-i-get-pslf-sooner-than-10-years [https://perma.cc/X5ZT-4QQB] (last visited Feb. 18, 2021).

84 Nicole Callahan, *8 Common Public Service Loan Forgiveness Mistakes*, DEP'T OF EDUC. (June 14, 2018), https://www.ed.gov/content/8-common-public-service-loan-forgiveness-mistakes [https://perma.cc/Q8RP-Q6VZ]. *See also* Robert Farrington*, Be Careful With Student Loan Pay Ahead Status And Loan Forgiveness*, THE C. INV. (Feb. 11, 2020), https://thecollegeinvestor.com/19797/pay-ahead-status-loan-forgiveness/ [https://perma.cc/GY38-PSLN].

and may even have negative spillover effects outside of student loans. For example, paying only the minimum payment on credit card balances each month leaves borrowers paying large amounts of interest and negatively impacts credit scores.[85] Borrowers in the habit of paying the minimum on their student loans may transfer that habit to other aspects of their personal finance lives.

In contrast, this Essay's salary supplement proposal would allow borrowers the freedom to increase the amount they pay each month if they can afford to do so. Paying more than the minimum amount will not reduce the salary supplement benefits the borrower receives. The salary supplement would be paid over the course of ten years of public service, even once the borrower fully repays their outstanding loan balance. Borrowers could therefore freely pay additional amounts towards their student loan balance, allowing them to get out of debt sooner and encouraging borrowers to adopt sound personal finance habits in the process.

III
TAX AND OTHER STRUCTURING CONSIDERATIONS

This Part will discuss additional PSLF structuring considerations regarding: (a) how PSLF's tax treatment could be altered to ensure the program's benefits are more equitably distributed; (b) how the salary supplement could be structured to encourage long-term public service; (c) whether the salary supplement should first be applied to any outstanding loan balance before being distributed directly to recipients' bank accounts; and (d) if Congress chooses to allocate additional funds to PSLF, how would such allocation fit into this Essay's PSLF structure. While these considerations are less vital to improving PSLF than what has been discussed thus far, this Part will provide policymakers with additional tools to use in improving the PSLF program. The adoption of this Part's proposals would also ensure that PSLF's benefits are more equitably distributed to those in need of student loan relief.

---

85 Allison Martin, *What Happens If You Only Pay the Minimum on Your Credit Card?*, EXPERIAN (Oct. 1, 2020), https://www.experian.com/blogs/ask-experian/what-happens-if-you-only-pay-the-minimum-amount-due/ [https://perma.cc/WJH7-6UDB].

A. Potential Tax Changes to PSLF's Structure

As discussed earlier,[86] discharge of indebtedness is ordinarily a taxable event. When a borrower first takes out a loan the borrower of course obtains money, but this flow of cash does not itself constitute income under the Internal Revenue Code.[87] Since the borrower is required to repay the loan at some point, the Tax Code does not recognize mere borrowing as a taxable accession to wealth.[88] Once the debt is discharged and the borrower is no longer responsible for paying it back, however, the borrower realizes taxable income in the amount of the discharge of indebtedness.[89]

There are numerous exceptions to this general rule, one of which is loan forgiveness pursuant to PSLF as it is currently structured. While Congress could make the salary supplement proposed in this Essay exempt from taxes just as PSLF loan forgiveness currently is, Congress should consider taxing PSLF benefits instead. Note that taxing PSLF benefits will not reduce the net amount of benefits distributed to borrowers under this proposal, nor will it change the total net cost of the program. Instead, making PSLF benefits taxable will simply ensure that such benefits are more equitably distributed to those in greater need.

To illustrate, again assume that each program participant is entitled to $3,000 per year in PSLF salary supplements. If the salary supplement is tax-free in line with how PSLF debt forgiveness is currently treated, each borrower will of course receive a net after-tax benefit of $3,000. The Treasury's cost would likewise be net $3,000 per borrower. What if we restructured the salary supplement to be taxable instead?

Consider two borrowers receiving the PSLF salary supplement, one a social worker in the 10% federal tax bracket, the other a doctor in the 30% federal tax bracket.[90] To keep the proposal revenue neutral still, we would want to distribute a gross, pre-tax amount to each borrower, such that after each borrower pays taxes the Treasury's net cost is still $3,000 per borrower, and the *average* benefit of the borrowers

---

86 *See supra* note 12 and accompanying text.

87 *See, e.g.*, Kenneth C. Weil, *Recourse and Nonrecourse Debt: What Are the Federal Income Tax Consequences When the Character of Debt Changes*, 74 TAX LAW. 141, 144 (2020).

88 *See id.*

89 *Id.* (citing *United States v. Kirby Lumber Co.*, 284 U.S. 1 (1931) and I.R.C. § 61(a)(11)).

90 There is currently a 32% federal tax bracket but no 30% tax bracket. For simplicity of illustration, I have rounded down the tax bracket to 30%.

is still $3,000 after taxes are paid.

If we give each borrower $3,750 in taxable salary supplements we will achieve this goal. The doctor would pay a 30% tax on this income, resulting in a tax bill of $1,125[91] and a net after-tax benefit amount of $2,625.[92] The social worker would pay a 10% tax on this income, resulting in $375[93] in taxes and a net after-tax amount of $3,375.[94] The net after-tax amount distributed between the doctor and social worker is still $6,000 total[95]—the same amount that would be distributed under the tax-free proposal.

What differs is that in this scenario the lower-income social worker gets $3,375 after tax (instead of only $3,000 after tax). And the high-income doctor gets $2,625 after tax (instead of getting $3,000 after tax). In effect, taxing PSLF benefits eliminates the current upside-down subsidy design of PSLF,[96] ensuring that those who earn less money and are thus most in need of loan forgiveness receive a greater proportion of benefits under the program.

Note that such treatment would align well with the congressional intent behind PSLF. Congress recognizes that those pursuing public service fields will often earn a salary lower than that which they otherwise could obtain. PSLF serves, in part, as a tool to mitigate such salary differential.

---

91 0.3 tax rate * $3,750 gross income = $1,125 in income taxes.

92 $3,750 gross income – $1,125 in taxes = $2,625 net income after paying taxes owed.

93 0.1 tax rate * $3,750 gross income = $375 in income taxes.

94 $3,750 gross income – $375 in taxes = $3,375 net income after paying taxes owed.

95 $2,625 net income for the doctor after paying taxes owed + $3,375 net income for the social worker after paying taxes owed = $6,000. Note that the total cost to the U.S. Treasury, after accounting for gross benefits sent out and taxes received, is likewise $6,000, the same net cost as under the tax-free proposal.

96 For background on upside-down subsidies, see Victor Thuronyi, *Tax Expenditures: A Reassessment*, 1988 DUKE L.J. 1155, 1159 (1988) ("In contrast to most government subsidy programs, which primarily benefit the needy, tax expenditures often provide an 'upside-down' subsidy: benefits from tax expenditures tend to increase along with the recipient's wealth. An upside-down subsidy occurs because a tax expenditure benefits only those persons with enough income to pay tax; moreover, if the tax expenditure is structured as a deduction or exclusion, the value of the benefit increases with the recipient's marginal tax rate, and hence with her taxable income. For example, the exclusion of combat pay is more beneficial to taxpayers in higher marginal tax brackets. The deduction for home mortgage interest provides another example. This deduction amounts to a subsidy for homeownership that excludes the poor, but gives wealthier taxpayers ever larger subsidies depending on their income and the value of their home. Congress would never have enacted a direct subsidy program structured like this. If the tax expenditure constitutes such a subsidy program, it too must be unacceptable as a matter of policy.") (citations omitted).

Assume that both the doctor and social worker could receive a higher salary in a non-public service field. Such higher salary earned would be taxed at the marginal federal tax rate for each worker—30% for the doctor, 10% for the social worker. It thus works well to likewise tax their PSLF salary supplement at the same rate.

B. Potential Change to Salary Supplement to Encourage Long-term Public Service

The salary supplement proposed in this Essay provides continuous benefits to public servants, starting upon the commencement of a public service job. Some may object to this structure, arguing that PSLF's benefits should be used to reward only those who spend many years in public service. Perhaps those with a long-term commitment to public service are more effective public servants or are more deserving of the program's benefits, and so PSLF funding should be reserved for them.

This argument overlooks two important classes of people whose public service plans are impacted by PSLF's current all-or-nothing structure. First, even those who are fully committed to public service upon college graduation sometimes have a change of heart along the way. Reserving PSLF's financial rewards only for those who complete 10 years of service creates harmful lock-in effects, as mentioned earlier. If the goal is to attract and retain highly motivated public servants, lock-in undermines that goal by trapping individuals in public service after they longer wish to remain public servants.

Second, even the most public service-oriented recent college graduate likely has some doubt as to whether she will be in public service 10 years after graduation. It is simply unreasonable to expect a 22- or 23-year-old to know with certainty what their career trajectory will look like for the next 10 years. For those deciding between a lower-paying public service job and a higher-paying private sector job, such uncertainty may be enough for them to pursue the private sector job, even if they have a strong interest in public service. Distributing PSLF's benefits only at the end of 10 years ensures that some highly motivated potential public servants choose not to pursue lower-paying public service jobs. Under this Essay's proposal, individuals will be incentivized to at least begin their careers in public service, even if they are not completely sure that they will remain in public service for an extended period of time. Of this group, many will enjoy public service enough to remain in the field long term. This Essay's proposal could therefore lead to more individuals making careers out of public service.

To the extent Congress wishes to better incentivize long-term public service, an alteration to this Essay's salary supplement proposal can help meet that goal. Instead of distributing $3,000 every year for the first 10 years of public service ($30,000 total), Congress can start the salary supplement below $3,000 for the first several years of an employee's public service and then gradually raise the amount of the salary supplement. For example, the salary supplement could be structured as follows: $2,000 a year for the first 3 years of an employee's public service,[97] $3,000 a year for the next 3 years of public service,[98] and $3,750 for the next 4 years of public service.[99]

This structure still provides a total of $30,000 of benefits to employees over the course of 10 years of public service,[100] the same total amount as would be distributed at $3,000 per year over 10 years. But this alternate structure distributes disproportionate benefits towards the later parts of an employee's 10 years of public service.

Through this alternate structure, employees are rewarded for long-term public service. But because benefits still accrue each month of public service, employees will not face much lock-in if they decide that public service is no longer for them. Similarly, those motivated to pursue public service but unsure if they will remain for a full 10 years would still have a strong incentive to pursue public service. These employees would be assured of significant financial benefits even if they don't end up staying in public service for a full decade.

Structuring the salary supplement in this way would not have much negative impact on the benefits of this Essay's proposal as outlined in Part II.[101]

C. Potential Change to Salary Supplement to Ensure

97 $2,000 * 3 = $6,000 for these years.

98 $3,000 * 3 = $9,000 for these years.

99 $3,750 * 4 = $15,000 for these years.

100 $6,000 + $9,000 + $15,000 = $30,000.

101 For example, individuals would still apply for the supplement when they start their jobs, so they will not operate for years under the false impression that they are eligible for PSLF if they are in fact not eligible. Similarly, individuals will still not have the incentive to borrow excessively for college because the supplement would still be untethered to student loan balance.

Benefits Apply Against Loan Balance

Throughout this Essay, the proposed salary supplement could have been thought of as a direct payment to the bank accounts of eligible PSLF participants. Some may object to such structure, arguing that providing a direct salary supplement would give borrowers the opportunity to apply PSLF funds to their general expenses, as opposed to using such funds only to pay down their student loans. Of course, in the current structure of PSLF, funds are used only to eliminate loan balances.

To the extent Congress considers such concerns valid, the following alteration to this Essay's proposal would easily negate any concern. Instead of a direct salary supplement to participants' bank accounts, the PSLF benefits could be structured akin to a refundable tax credit. A refundable tax credit—such as the Earned Income Tax Credit[102]—first applies to reduce a taxpayer's tax liability. Then, if tax liability is reduced to $0, the remainder is refunded directly to the taxpayer.[103]

Similarly, the PSLF supplement could automatically be applied first against any remaining loan balance that the borrower owes. Once the loan balance is completely eliminated, assuming the borrower has not yet obtained the 10 years' worth of benefits they are entitled to, the remaining supplement would then be deposited in the borrower's bank account each month. Using this structure, borrowers would be unable to use PSLF funds for anything other than paying down eligible student loans, so long as they have such student loan balance outstanding. Only once their loan is paid off would the borrower have discretion regarding how to spend the PSLF funds.

Using this structure would not have much (if any) negative impact on the benefits of this Essay's proposal as outlined in

---

102 Elaine Maag, *Refundable Credits: The Earned Income Tax Credit and the Child Tax Credit*, TAX POL'Y CTR. (Mar. 23, 2017), https://www.taxpolicycenter.org/publications/refundable-credits-earned-income-tax-credit-and-child-tax-credit/full [https://perma.cc/U4YC-VL7M].

103 *See, e.g.*, Vada Waters Lindsey, *Encouraging Savings Under the Earned Income Tax Credit: A Nudge in the Right Direction*, 44 U. MICH. J.L. REFORM 83, 93 (2010) ("Making the credit refundable will enable an eligible taxpayer without a tax liability to receive the credit as a refund on the taxpayer's tax return."); *Policy Basics: The Earned Income Tax Credit,* CTR. ON BUDGET AND POL'Y. PRIORITIES, https://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit [https://perma.cc/V8LD-BW4M] (last updated Dec. 10, 2019) ("The EITC is 'refundable,' which means that if it exceeds a low-wage worker's income tax liability, the IRS will refund the balance.").

Part II.

D. Potential Congressional Allocation of Additional Funding for Student Loan Forgiveness

The Essay has framed its proposal as one that would be revenue neutral, thus demonstrating how Congress could dramatically improve PSLF in a bipartisan manner, all without spending an additional penny. That being said, I of course recognize that many have recently argued that Congress should allocate additional funding to help reduce sky-high student loan debt.[104] Should Congress wish to increase student loan funding, such additional funding allocations could easily be integrated into this Essay's proposal.

If $3,000 a year per PSLF participant would keep the program revenue neutral, and Congress wishes to increase PSLF funding, it can easily set the salary supplement equal to $4,000 a year, $6,000 a year, or $10,000 a year. This Essay's proposal in no way limits how much Congress could spend on PSLF. Rather, it argues that regardless of how much Congress allocates to PSLF—whether it keeps PSLF spending the same, increases PSLF spending, or even reduces it—structuring PSLF as a salary supplement rather than as a loan forgiveness program would result in a far more effective program.

CONCLUSION

The Public Service Loan Forgiveness program has rejected the vast, vast majority of applications, an unconscionable result given how important loan forgiveness is for borrowers pursuing the program. PSLF also creates numerous poor incentives for those who enroll in the program. As the student loan debt crisis becomes an increasingly important political issue, the time is right for Congress to finally fix the broken PSLF program. Congress should restructure PSLF as a salary supplement, which it can do in a bipartisan, revenue neutral manner.

---

104 *See, e.g.*, Erica L. Green, supra note 73.