



National Association  
of Independent Schools

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September 15, 2017

Hilary Malawer, Assistant General Counsel  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, SW Room 6E231  
Washington DC 20202

Re: Evaluation of Existing Regulations (Docket ID: ED-2017-OS-0074)

Dear Ms. Malawer:

NAIS appreciates the Department's commitment to reviewing all regulations and guidance documents and determining what may be ripe for repeal, replacement, or modification. We understand that the Department must update and tailor rules and guidance to the needs of students, families, schools, and educators to reduce undue costs and unnecessary burdens. The National Association of Independent Schools (NAIS) appreciates the opportunity to highlight the issues important to the independent education community. NAIS is a nonprofit membership association that provides services to more than 1,600 501(c)(3) nonprofit, independent, day, and boarding K-12 schools in the U.S.

#### **Public Service Loan Forgiveness**

NAIS would like to draw the Department's attention to the Public Service Loan Forgiveness program (PSLF) and its accompanying regulations. The PSLF program is a critical tool that bolsters professionals throughout the country and allows them to enter and remain in public service careers, including education, despite high student loan debt. While the regulations in 34 C.F.R. § 685.219 outline the basic contours of the program, there is little formal guidance from the Department to assist the public service community in understanding the PSLF program, confirming their eligibility, enrolling in appropriate payment plans, and making on-time payments. NAIS urges the Department to maintain and strengthen the PSLF program by reviewing, simplifying, and clarifying this guidance and engaging in education efforts with both the loan servicers and public service community.

Under President George W. Bush, Congress established the Public Service Loan Forgiveness (PSLF) Program in 2007. The purpose of the PSLF program is to encourage individuals to seek out and continue in careers in public service by forgiving eligible loan debt after a period of repayment. In short, this program allows and encourages graduates to enter careers that benefit the community but pay less than other sectors. This is particularly important in education, where teachers influence and guide our students. This program is even more significant now, as baby boomers continue to retire, schools around the country are concerned about recruiting the next generation of educators, particularly in high-need STEM subjects. Compounding these concerns are the rising levels of student debt that may discourage graduates from seeking a career in education. In 2015, approximately 68% of graduating seniors held student loan debt, averaging around \$30,000 per student.<sup>1</sup>

To qualify for the program, an individual must work for a public service organization (including a tax-exempt 501(c)(3) nonprofit such as an independent school) and make 120 monthly payments on federal direct loans. After making these payments, that individual must then apply for loan forgiveness, which when granted, forgives the remaining debt without tax consequences.

This process appears relatively straightforward—possess an eligible loan(s), work for an eligible employer, enter into an eligible repayment plan, and make 120 eligible payments—but there are many points of confusion that have lead individuals to believe they are eligible for PSLF when they are not, to sign up for incorrect repayment plans, or to misunderstand how many eligible payments have been made. It is critical that the Department engage in increased education efforts with all loan servicers and borrowers so that the terms and conditions surrounding the PSLF program are accessible and understandable to all parties. This confusion and uncertainty is harmful to employers who will struggle to attract and retain top talent if the path to PSLF is diminished or unclear. It is also harmful to borrowers who may struggle under even greater debt if ill-informed payment plan decisions are made or earlier guarantees are revoked.

#### *Improve Tracking Public Service Loan Forgiveness Eligibility*

The Federal Student Aid Office has two webpages with information regarding the FSLF program. One contains basic information (<https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service>) and the other has more detailed questions and answers (<https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/questions>). The basic information page contains useful material for borrowers. The Department urges borrowers to complete and submit the Employment Certification for Public Service Loan

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<sup>1</sup> The Institute for College Access & Success, Student Debt and the Class of 2015 (11<sup>th</sup> Annual Report, October 2016). Accessed September 14, 2017, [http://ticas.org/sites/default/files/pub\\_files/classof2015.pdf](http://ticas.org/sites/default/files/pub_files/classof2015.pdf).



Forgiveness Form annually or when they change employers so can know if they have eligible loans, are utilizing an eligible payment plan, and work for an eligible employer. This system provides certainty to borrowers, and as the American Council on Education (ACE) noted in a recent letter to the Department, “this system is critically important to preserve confidence in the program so that all borrowers fully understand the eligibility of their employment and loans throughout the 10-year period.”<sup>2</sup>

However, this system can and must be improved. Although the basic information page and the FAQ page inform borrowers that the Department will notify them if their submission is incomplete or they are ineligible in some way, the Department should clarify the process by which borrowers are notified of their status, may submit additional information, and may appeal an adverse determination. This should be done through additional guidance, meaningful public engagement and education efforts, or some combination thereof. Furthermore, in ongoing litigation, the Department has suggested that borrowers may not be able to rely on approval determinations and that such determinations can be rescinded at any time.<sup>3</sup> This is concerning for borrowers who believe they are on course and have made decisions in reliance of that determination. The arguments made by the Department in this litigation undermine the trustworthiness of the program. NAIS joins ACE in urging the Department to not reverse prior positive eligibility determinations for PSLF borrowers and to offer the opportunity for public comment on any future policy changes of this nature.

#### *Clarify Eligibility for Employees Who Work for a Religious Nonprofit Organization*

NAIS member schools represent the diversity of educational options in this country and include schools of many different religious affiliations. While employees of non-religious NAIS schools clearly work for an eligible public service organization and will thereby qualify for PSLF provided they meet the other criteria, borrowers who work at religious schools may be uncertain about their PSLF status. The Department’s PSLF basic information and FAQ page explain that to be eligible for PSLF, a borrower must work full-time (at least 30 hours or the employer’s definition of full-time, whichever is greater) at a qualifying not-for-profit organization, but that time spent on religious instruction, worship services, or any form of proselytizing cannot count towards this requirement. These terms are not further defined. It would be helpful if the FAQs or some other guidance provide additional examples to clarify, for example, the eligibility of a teacher with generally secular duties in the classroom, but occasional

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<sup>2</sup> American Council on Education, Public Service Loan Forgiveness (May 2, 2017), <http://www.acenet.edu/news-room/Documents/Letter-ED-Public-Service-Loan-Forgiveness.pdf>.

<sup>3</sup> Brief of Defendant at 11, 26, American Bar Association v. U.S. Department of Education, No. 16-cv-02476-RDM (U.S. District Court for the District of Columbia. Mar. 23, 2017), [http://www.abajournal.com/files/16-cv-2476\\_Filed\\_Answer\\_032317.pdf](http://www.abajournal.com/files/16-cv-2476_Filed_Answer_032317.pdf); Stacy Cowley, *Student Loan Forgiveness Program Approval Letters May Be Invalid, Education Dept. Says*, *The New York Times* (Mar. 30, 2017), <https://www.nytimes.com/2017/03/30/business/student-loan-forgiveness-program-lawsuit.html>.

religious-based duties such as taking a class to a weekly chapel. NAIS requests that the Department provide additional guidance so that educators and other staff at religious schools understand their eligibility for PSLF and can plan their financial futures accordingly.

### **Maintain, Clarify, and Consolidate Every Student Succeeds Act Equitable Services Guidance**

NAIS is a member of the Council for American Private Education (CAPE)<sup>4</sup> which is a coalition of national organizations and state affiliates which serve more than 80 percent of private elementary and secondary school enrollment in the country. Both individually and through CAPE, NAIS advocates for the equitable participation of private school students and educators in federal programs. Equitable participation has been a cornerstone in federal education programs since their inception in the 1960s. When Congress passed the Every Student Succeeds Act (ESSA) in December 2015, the principle that private schools students and educators should be served in an equitable manner was extended and fortified through the creation of a new program which allowed for the equitable participation of private school participants (the Student Support and Enrichment Grant), the alteration of Title II, Part A equitable services formula to potentially increase the amount available to private school educator professional development, and the creation of the Ombudsmen position to facilitate the relationship between school districts and private schools and monitor and enforce equitable services provisions under the law.

After the passage of ESSA, the Department issued several timely and useful new guidance documents illustrating the changes in the law, including *"Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA),"*<sup>5</sup> the guidance pertaining to equitable services. NAIS would like to echo CAPE's comments that this *Equitable Services* guidance has been vital in highlighting and explaining the opportunities under ESSA for the private school community. This guidance should be retained and promoted to all stakeholders to enhance participation, understanding, and cooperation. However, NAIS also agrees with CAPE that there may be some confusion regarding how the new *Equitable Services* guidance interacts with existing guidance documents *"Title I Services to Eligible Private School Children"*<sup>6</sup> and *"Title IX, Part E Uniform Provisions, Subpart 1—Private Schools."*<sup>7</sup> The new *Equitable Services* guidance indicates that unless otherwise provided, existing guidance in the old *Title I Services* and *Uniform*

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<sup>4</sup> See Council for American Private Education: Voice of America's Private Schools. Accessed Sept. 15, 2017, <http://www.capenet.org/>.

<sup>5</sup> U.S. Department of Education, Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA) (Nov. 21, 2016), <https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>. ("Equitable Services").

<sup>6</sup> U.S. Department of Education, Non-Regulatory Guidance: Title I Services to Eligible Private School Children (Oct. 17, 2003), <http://www2.ed.gov/programs/titleiparta/psguidance.doc>.

<sup>7</sup> U.S. Department of Education, Non-Regulatory Guidance: Title IX, Part E Uniform Provisions, Subpart 1—Private Schools (Mar. 2009), <https://www2.ed.gov/policy/elsec/guid/equitableseguidance.doc>.



*Provisions* documents remain applicable.<sup>8</sup> It can be challenging for schools to cross-reference between the various documents and understand which older guidance may still be relevant.<sup>9</sup>

Additionally, there may also be confusion on how to access up-to-date comprehensive guidance on Title II, Part A professional development programs. The Department's new guidance on Title II, Part A entitled "*Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Learning*" states that this guidance supersedes<sup>10</sup> the Department's prior Title II guidance, "*Non-Regulatory Guidance: Improving Teacher Quality State Grants ESEA Title II, Part A.*"<sup>11</sup> While the new *Building Systems* guidance provides an excellent big-picture overview of how ESSA funds can be used to strategically design a comprehensive professional development program, it does not significantly discuss private school specific issues nor does it include some of the practical FAQs found in the old *Improving Teaching Quality* guidance. Moreover, while the *Building Systems* guidance does direct private school participants to the new *Equitable Services* guidance for information on equitable participation of private school educators in Title II, Part A programs,<sup>12</sup> the *Equitable Services* guidance focuses on how the equitable share should be calculated for private school participants and general permissible uses for the funds,<sup>13</sup> not on some of the practical use questions that arise once the share has been calculated.

For example, in the old *Improving Teaching Quality Guidance*, question G-13 asks whether Title II, Part A funds may be used to pay stipends to private school teachers participating in professional development programs and answers yes, with the caution that stipends must be paid to the teachers for their own use and not paid directly to the private school itself.<sup>14</sup> This question also comes up in the context of whether Title II, Part A funds may be used

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<sup>8</sup> Equitable Services at 23.

<sup>9</sup> Other prior guidance documents referenced in the new Equitable Services guidance include "Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the Department of Education" (2003), "Local Educational Agency Identification and Selection of School Attendance Areas and Schools and Allocation of Title I Funds to Those Areas and Schools" (2003), "Title I Fiscal Issues: Maintenance of Effort Comparability Supplement, Not Supplant Carryover Consolidating Funds in Schoolwide Programs Grantback Requirements" (2008), and "The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended" (2015). The Equitable Services Guidance references sections of these guidance documents that are still in force, but does not directly incorporate the language. Doing so would ease compliance and promote greater understanding of how equitable services provisions are meant to operate under ESSA. Additionally, there is a toolkit entitled "Ensuring Equitable Services to Private School Children: A Title I Resource Toolkit" that could also be updated or incorporated into the new Equitable Services guidance.

<sup>10</sup> U.S. Department of Education, *Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Learning* (Sept. 27, 2016), <https://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf>. ("Building Systems").

<sup>11</sup> U.S. Department of Education. *Non-Regulatory Guidance: Improving Teacher Quality State Grants ESEA Title II, Part A* (Oct. 5, 2006), <https://www2.ed.gov/programs/teacherqual/guidance.doc>. ("Improving Teacher Quality").

<sup>12</sup> *Building Systems* at 28, n. 14.

<sup>13</sup> *Equitable Services* at 35–37.

<sup>14</sup> *Improving Teacher Quality* at 51.

to pay for private school educators to attend conferences such as the NAIS annual conference. While many of the FAQs in the *Improving Teaching Quality* guidance are superseded due to structural changes made to Title II, Part A by ESSA, it would be useful for the Department to consider if questions like G-13 could be consolidated into the new *Building Systems* guidance to provide clarity, consistency, and examples to guide private school educators.

Overall, NAIS joins CAPE's call for the Department to retain the new *Equitable Services* guidance, evaluate other ESSA guidance documents related to equitable services programs, and clearly consolidate information so that stakeholders have easy access to the full range of currently applicable guidance, examples, and FAQs.

Thank you in advance for your time and consideration as the Department continues its work on behalf of the nation's students, families, schools, and educators. If NAIS can be of any help as you work on these or any issues we are happy to participate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Debra P. Wilson', with a long horizontal flourish extending to the right.

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*America's Independent Schools: Learning, Leading, Achieving*