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 9 *California*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12
 13
 14 **PEOPLE OF THE STATE OF**
CALIFORNIA ex rel. Xavier Becerra,
 15 Attorney General of California,

16 Plaintiff,

17 v.

18 **BETSY DEVOS**, in her official capacity as
 Secretary of Education, and **UNITED**
 19 **STATES DEPARTMENT OF**
EDUCATION,

20 Defendants.
 21

Case No. 20-cv-3676

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

**ADMINISTRATIVE PROCEDURE ACT
 CASE**

22
 23 **INTRODUCTION**

24 1. The United States Department of Education (“ED”) is flouting Congress’s clear
 25 and repeated instructions to provide student loan debt relief to public servants. In recognition of
 26 the importance of public service and to help federal student loan borrowers overcome financial
 27 barriers to public interest employment, in 2007, Congress created the Public Service Loan
 28

1 Forgiveness (“PSLF”) program. Under PSLF, ED is required to forgive qualifying public
2 servants’ student loan debt. However, ED is not providing this critical relief. ED has erected
3 numerous obstacles to forgiveness, created borrower confusion, and issued virtually categorical
4 denials—only about 1% of applicants can access PSLF. This compromises teachers, police
5 officers, nurses, EMTs, and other public servants’ ability to support themselves and their families.

6 2. Frustrated by ED’s failure to implement PSLF, in 2018, Congress created an
7 emergency relief program: the Temporary Expanded Public Service Loan Forgiveness
8 (“TEPSLF”) program. To ensure public servants’ quick access to loan forgiveness after ten years
9 of qualifying public service employment and loan payments, Congress mandated that ED
10 implement a “simple” application method “within 60 days” of enactment of TEPSLF. Congress
11 also expanded eligibility criteria for loan forgiveness to help public servants hurt by ED’s
12 widespread practice of misinforming borrowers about qualifying repayment plans and other
13 program requirements.

14 3. ED, however, ignored Congress’s clear commands. Instead of faithfully
15 implementing TEPSLF, ED continued to use a convoluted application process and continued
16 denying the vast majority of applications for public service loan forgiveness.

17 4. Today, two years after TEPSLF’s sixty-day deadline, ED has yet to implement the
18 simple application process mandated by Congress. As a result, the TEPSLF denial rate is
19 staggering—at about 94%—and borrower confusion remains rampant.

20 5. ED’s mismanagement of Congress’s public service loan relief programs is
21 especially harmful now. As COVID-19 continues to sweep across California, ED’s failure to
22 provide promised loan forgiveness to public servants hurts our heroes. Servicemembers are
23 helping Californians access food and medical treatment. Teachers are finding innovative ways to
24 help our children learn and grow outside the classroom. And nurses are caring for our loved ones
25 during their last moments of life. ED’s failure to deliver on Congress’s promise to these and other
26 public servants to forgive federal student loans after ten years of faithful payments and service to
27 our community is shameful and illegal.

28 6. ED’s failure to timely provide public servants with a simple application method

1 and meaningful opportunity for relief constitutes unlawfully withheld, unreasonably delayed, and
2 illegal agency action in violation of the Administrative Procedure Act.

3 **JURISDICTION AND VENUE**

4 7. This action arises under the Administrative Procedure Act (“APA”), 5 U.S.C.
5 §§ 701-706. This Court has subject-matter jurisdiction over this action because it is a case arising
6 under federal law. 28 U.S.C. § 1331.

7 8. An actual, present, and justiciable controversy exists between the parties within the
8 meaning of 28 U.S.C. § 2201(a), and this Court has authority to grant declaratory and injunctive
9 relief under 28 U.S.C. §§ 2201 and 2202.

10 9. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1) because the
11 People of the State of California reside in this district and no real property is involved in this
12 action.

13 **INTRADISTRICT ASSIGNMENT**

14 10. Assignment to the San Francisco Division is appropriate because a substantial part
15 of the events or omissions giving rise to the claims in this complaint occurred in the County of
16 San Francisco. Among other events, California state agencies and institutions whose talent pools
17 are harmed by employees and potential employees’ inability to access PSLF and TEPSLF are
18 located in the County of San Francisco. Moreover, the People of the State of California maintain
19 an office in the San Francisco Division.

20 **PARTIES**

21 11. The People of the State of California (“California” or “People”) bring this action
22 by and through its Attorney General, Xavier Becerra, California’s chief law officer. Cal. Const.
23 art. V, § 13.

24 12. Defendant Betsy DeVos is the Secretary of Education and is being sued in her
25 official capacity. Her official address is 400 Maryland Avenue, SW, Washington, D.C. 20202.

26 13. Defendant the United States Department of Education is an executive agency of
27 the United States government. Its principal address is 400 Maryland Avenue, SW, Washington,
28 D.C. 20202.

1 **FACTUAL ALLEGATIONS**

2 **I. FEDERAL STUDENT LOANS**

3 14. Students pursuing higher education can receive federal financial assistance under
4 Title IV of the Higher Education Act of 1965, as amended (“HEA”), in the form of federal
5 student loans, work-study, and grants.¹

6 15. These programs provide critical assistance to prospective and enrolled students
7 and foster access to higher education. According to data released by ED in 2018, 72% of all
8 undergraduates received some type of financial aid to gain access to postsecondary education.²

9 16. ED administers various Title IV loan programs, including the Federal Family
10 Education Loan (“FFEL”) program.³ FFEL Loans are originated and funded almost exclusively
11 by private lenders, insured by guaranty agencies, and reinsured by the federal government.

12 17. In time, Congress shifted away from the FFEL program, and in 1993, ED began
13 administering the William D. Ford Federal Direct Loan (“Direct Loan”) program.⁴ Under the
14 Direct Loan program, ED directly lends money to eligible student borrowers. The Direct Loan
15 program is an especially important source of financing for students who cannot meet the
16 underwriting standards of private lenders.

17 18. The FFEL and Direct Loan programs operated concurrently until 2010, when the
18 FFEL program was discontinued and the Direct Loan program expanded.⁵ No new FFEL Loans
19 have been issued since June 30, 2010, though borrowers are still repaying FFEL Loans.⁶

20 19. The standard repayment term of both FFEL and Direct Loans is ten years.

21 20. In addition to the ten-year Standard plan, there are several repayment plans with
22

23 ¹ 20 U.S.C. § 1070 et seq.

24 ² Nat’l Ctr. for Educ. Statistics, *2015–16 National Postsecondary Student Aid Study*, at 5
(Jan. 2018), <http://nces.ed.gov/pubs2018/2018466.pdf>.

25 ³ 20 U.S.C. § 1071 et seq.

26 ⁴ *Id.* §§ 1087a-1087j.

27 ⁵ Eric M. Fink & Roland Zullo, *Federal Student Loan Servicing: Contract Problems and
28 Public Solutions*, at 4 (June 25, 2014), [https://www.elon.edu/docs/e-
web/law/faculty/Fink_Zullo_Federal_Student_Loan_Servicing_report_06_25_2014.pdf](https://www.elon.edu/docs/e-web/law/faculty/Fink_Zullo_Federal_Student_Loan_Servicing_report_06_25_2014.pdf).

⁶ U.S. Dep’t of Educ., *FY 2018 Agency Financial Report*, at 73 (Nov. 15, 2018),
<https://www2.ed.gov/about/reports/annual/2018report/agency-financial-report.pdf>.

1 varying terms of repayment. These include Income-Driven Repayment (“IDR”) plans, which
 2 tailor repayment obligations to the borrower’s income and family size.⁷ To qualify for an IDR
 3 plan, borrowers must annually submit documentation of their income and family size.⁸

4 21. Extended and Graduated repayment plans are additional alternatives to the
 5 standard repayment terms. Under the Extended plan, the term of repayment is twenty-five years.⁹
 6 Under the Graduated plan, borrowers start with lower loan payments that increase every two
 7 years.¹⁰

8 22. The country is facing a student loan debt crisis. The student loan burden in the
 9 United States is more than \$1.5 trillion and rising.¹¹ As of March 31, 2020, over 3.8 million
 10 California student borrowers owed more than \$137 billion in federal student loans.¹²

11 23. The student loan debt burden is weighing on household finances and the economy.
 12 For example, student loan debt can prevent individuals from saving for a down payment on a
 13 home, qualifying for a mortgage, or starting a small business. These activities drive economic
 14 growth and wealth creation.¹³ Student debt also impacts borrowers’ ability to save for retirement
 15 and, for many, can delay important life decisions such as getting married and having children.
 16 Student debt also reduces financial security and increases stress, among other impacts.¹⁴

17 _____
 18 ⁷ IDR is an umbrella term that encompasses several repayment plans available to
 19 borrowers that base loan payments primarily on income and family size and that extend
 20 repayment periods from the standard ten years to twenty or twenty-five years, including: Revised
 21 Pay As You Earn Repayment (“REPAYE”), Pay As You Earn Repayment (“PAYE”), Income-
 22 Based Repayment (“IBR”), and Income-Contingent Repayment (“ICR”). *See* U.S. Dep’t of Educ.,
 23 *If your federal student loan payments are high compared to your income, you may want to repay*
 24 *your loans under an income-driven repayment plan*, [https://studentaid.gov/manage-](https://studentaid.gov/manage-loans/repayment/plans/income-driven)

25 [loans/repayment/plans/income-driven](https://studentaid.gov/manage-loans/repayment/plans/income-driven).
⁸ 34 C.F.R. §§ 682.209, 682.215.

26 ⁹ U.S. Dep’t of Educ., *The Extended Repayment Plan allows you to repay your loans over*
 27 *an extended period of time*, <https://studentaid.gov/manage-loans/repayment/plans/extended>.

28 ¹⁰ U.S. Dep’t of Educ., *The Graduated Repayment Plan starts with lower payments that*
increase every two years, <https://studentaid.gov/manage-loans/repayment/plans/graduated>.

¹¹ U.S. Dep’t of Educ., *Federal Student Loan Portfolio*, at Federal Student Aid Portfolio
 Summary, <https://studentaid.gov/data-center/student/portfolio>.

¹² *Id.* at Portfolio by Location.

¹³ *See* Harmeet Kaur, *The Student Loan Debt is \$1.6 Trillion and People are Struggling to*
 Pay It Down, CNN (Jan. 19, 2020), [https://www.cnn.com/2020/01/19/us/student-loan-slow-](https://www.cnn.com/2020/01/19/us/student-loan-slow-repayment-moodys-trnd/index.html)
 repayment-moodys-trnd/index.html.

¹⁴ *See* Diana Hembree, *New Report Finds Student Debt Burden Has ‘Disastrous Domino*
Effect’ on Millions of Americans, Forbes (Nov. 1, 2018),

1 24. Borrowers who enter public service fields are even more likely to face financial
2 hardship when repaying their student loans than those who enter the private sector.¹⁵

3 25. Public service fields generally offer lower wages than the private sector. In
4 addition, many public service professions have credential or degree requirements that require
5 higher education, which can result in increased student loan debt.¹⁶

6 26. ED data show that low-to-moderate income borrowers should benefit most from
7 the PSLF program.¹⁷ In 2016, ED reported that almost two-thirds of borrowers on IDR plans who
8 intended to pursue PSLF earned less than \$50,000 a year.¹⁸

9 **II. CONGRESS CREATES PSLF TO PROMOTE THE RECRUITMENT AND RETENTION OF**
10 **PUBLIC SERVANTS IN CRITICAL PUBLIC SECTOR JOBS**

11 27. In 2007, as part of the College Cost Reduction and Access Act (“CCRAA”),
12 Congress created the PSLF program¹⁹ to help borrowers who want “to pursue a career in public
13 service and be able to take those jobs . . . often at lower pay” by “reliev[ing] them[] of the huge
14 burden of debt they face.”²⁰

15 28. As Senator Edward Kennedy stated when the PSLF bill was approved:

16 [I]t is the desire of so many of these young people to be involved in public service
17 and to help respond to the needs in their communities. They want to be part of the
18 solution, not part of the problem. So often, because of their indebtedness, they have
19 to choose careers in order to deal with the indebtedness. So this legislation will
20 open up or help us take advantage of that idealism that is out there. We are giving
them a pathway to making a difference in terms of the future of our country, and I
think that is enormously important. That is one of the most important parts of this
legislation.²¹

21 [https://www.forbes.com/sites/dianahembree/2018/11/01/new-report-finds-student-debt-burden-](https://www.forbes.com/sites/dianahembree/2018/11/01/new-report-finds-student-debt-burden-has-disastrous-domino-effect-on-millions-of-americans/#1fb3503012d1)
22 [has-disastrous-domino-effect-on-millions-of-americans/#1fb3503012d1](https://www.forbes.com/sites/dianahembree/2018/11/01/new-report-finds-student-debt-burden-has-disastrous-domino-effect-on-millions-of-americans/#1fb3503012d1).

23 ¹⁵ See Consumer Fin. Prot. Bureau, *Staying On Track While Giving Back: The Cost of*
Student Loan Servicing Breakdowns for People Serving Their Communities, at 19-21 (June 2017),
https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf.

24 ¹⁶ See *id.* at 2, 21.

25 ¹⁷ U.S. Dep’t of Educ., *Direct Loan Public Service Loan Forgiveness*, at 23 (July 2016),
[https://fsaconferences.ed.gov/conferences/library/2016/NASFAA/2016NASFAADirectLoanPSL](https://fsaconferences.ed.gov/conferences/library/2016/NASFAA/2016NASFAADirectLoanPSLF.pdf)
[F.pdf](https://fsaconferences.ed.gov/conferences/library/2016/NASFAA/2016NASFAADirectLoanPSLF.pdf).

26 ¹⁸ U.S. Dep’t of Educ., *Public Service Loan Forgiveness Policy and Operations*, at 29
(Nov. 2016), <http://fsaconferences.ed.gov/conferences/library/2016/2016FSAConfSession18.ppt>.

27 ¹⁹ CCRAA § 455(m) (codified at 20 U.S.C. § 1087e(m)).

28 ²⁰ 153 Cong. Rec. S11,245 (daily ed. Sept. 7, 2007) (statement of Sen. Sherrod Brown).

²¹ 153 Cong. Rec. S11,258 (daily ed. Sept. 7, 2007) (statement of Sen. Edward M.

1 29. To encourage borrowers to enter and remain in public service, Congress mandated
2 that, through the PSLF program, ED “shall cancel the balance of interest and principal due” for
3 public servants after 120 qualifying loan payments.²²

4 30. Qualification for PSLF is intended to be straightforward. Borrowers are eligible if
5 they: (1) made 120 payments on their loans after October 1, 2007; (2) made these payments on
6 outstanding Direct Loans; (3) were on a qualifying repayment plan; and (4) were employed full-
7 time in public service while making the 120 payments and are employed in public service at the
8 time of loan forgiveness.²³

9 31. The required 120 payments need not be consecutive.²⁴

10 32. Qualifying repayment plans for PSLF are IDR plans, Standard plans, or a plan
11 with a monthly payment at least equal to the Standard plan.²⁵

12 33. Public servants who do not have Direct Loans may become eligible for the
13 program by consolidating their loans into Direct Loans.²⁶

14 34. In October 2008, ED issued regulations, publicly committing to its obligation
15 under PSLF to “forgive[] the principal and accrued interest that remains on all eligible loans for
16 which loan forgiveness is requested by the borrower.”²⁷

17 35. Under ED’s regulations, qualifying public service requires that the borrower is
18 “hired and paid by a public service organization.”²⁸ Thus, a borrower’s eligibility for PSLF is
19 determined by their employer’s status.

20 36. “Public service organization” includes any government organization; not-for-profit
21 organization classified under Section 501(c)(3) of the Internal Revenue Code; or not-for-profit,
22 private organization that is not classified under Section 501(c)(3) if it provides qualifying “public

23 _____
Kennedy).

24 ²² 20 U.S.C. § 1087e(m)(1).

25 ²³ *Id.*

26 ²⁴ See U.S. Dep’t of Educ., *Public Service Loan Forgiveness (PSLF)*,
<https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service>.

27 ²⁵ 20 U.S.C. § 1087e(m)(1)(A).

28 ²⁶ *Id.* § 1087e(m)(3)(A).

²⁷ 34 C.F.R. § 685.219(d).

²⁸ *Id.* § 685.219(b).

1 services” and does not engage in certain disqualifying activities.²⁹

2 37. Qualifying public services include, as examples, military service, law enforcement,
3 public interest law, public education, and health care.³⁰

4 38. In the notice-and-comment period for these regulations, ED received numerous
5 comments expressing concern about borrowers’ ability to track their PSLF eligibility status and to
6 access loan forgiveness.³¹ Specifically, “Many commenters asked [ED] to develop a clear and
7 simple method for the borrower, the employer, or both, to determine annually the borrower’s
8 eligibility for public service loan forgiveness”³²

9 39. In response, ED committed to developing an employment certification form that
10 borrowers can use to document their progress towards forgiveness under PSLF.³³

11 40. ED launched the Employment Certification Form (“ECF”) in 2012.³⁴ To be
12 granted forgiveness under PSLF, borrowers must submit ECFs covering their 120 qualifying
13 payments. Borrowers may submit ECFs before they are eligible for forgiveness to receive regular
14 feedback from ED on their employment and qualifying payments. ED recommends that
15 borrowers submit ECFs annually or when a borrower’s employer changes.³⁵

16 41. After ten years of payments, borrowers apply for loan forgiveness using an
17 application form—the “Public Service Loan Forgiveness (PSLF): Application for Forgiveness”—
18 in addition to submitting ECFs.³⁶

19 42. ED administers the PSLF program through one loan servicer, FedLoan Servicing,
20 operated by the Pennsylvania Higher Education Assistance Agency. ED retains ultimate

21 ²⁹ *Id.*

22 ³⁰ *Id.*

23 ³¹ Federal Perkins Loan Program, Federal Family Education Loan Program, and William
D. Ford Federal Direct Loan Program, 73 Fed. Reg. 63,232 (Oct. 23, 2008),
<https://www.govinfo.gov/content/pkg/FR-2008-10-23/pdf/E8-24922.pdf>.

24 ³² *Id.* at 63,241.

25 ³³ *Id.* at 63,241-42.

26 ³⁴ U.S. Dep’t of Educ., *Public Service Loan Forgiveness Data*, <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

27 ³⁵ U.S. Dep’t of Educ., *Public Service Loan Forgiveness (PSLF)*,
<https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service>.

28 ³⁶ U.S. Dep’t of Educ., *Public Service Loan Forgiveness (PSLF): Application for Forgiveness*, <https://studentaid.gov/sites/default/files/public-service-application-for-forgiveness.pdf>.

1 responsibility for administration of PSLF.

2 43. ED uses several other loan servicers for general student loan servicing. Once a
3 borrower submits an ECF to ED documenting PSLF-qualifying employment, if the borrower's
4 servicer is not already FedLoan Servicing, the borrower's loans are generally transferred to
5 FedLoan Servicing.³⁷

6 **III. INSTEAD OF RELIEVING PUBLIC SERVANTS' STUDENT LOAN DEBT, AS**
7 **STATUTORILY MANDATED BY CONGRESS, ED TURNS PSLF INTO A BUREAUCRATIC**
8 **NIGHTMARE**

9 44. The first public servants became eligible for loan forgiveness in 2017, ten years
10 after Congress created PSLF. This is because the program requires at least 120 qualifying
11 monthly loan payments. As of March 31, 2020, ED has granted relief to only about 1% of the
12 nearly 146,000 PSLF applicants.³⁸

13 45. Since ED started accepting PSLF applications in October 2017, ED has granted
14 forgiveness to a mere 1,831 applicants.³⁹

15 46. The near 99% denial rate is the result of ED's pervasive mismanagement.

16 47. ED is responsible for establishing the administrative structure necessary to fulfill
17 the PSLF program's goal of encouraging individuals to enter and continue in public service
18 employment by providing loan forgiveness to qualifying borrowers. ED, however, has abdicated
19 its responsibility; its failures are many.

20 48. One main program failure is that ED's loan servicers, under ED's supervision and
21 control, have misled borrowers about program requirements, including which repayment plans
22 qualify. This has caused public servants to spend years making payments on loans believing they
23 were on track for PSLF when their payments did not qualify.⁴⁰ ED's failure to communicate

24 ³⁷ U.S. Dep't of Educ., *Public Service Loan Forgiveness (PSLF): Employment*
25 *Certification Form*, [https://studentaid.gov/sites/default/files/public-service-employment-](https://studentaid.gov/sites/default/files/public-service-employment-certification-form.pdf)
26 [certification-form.pdf](https://studentaid.gov/sites/default/files/public-service-employment-certification-form.pdf).

27 ³⁸ U.S. Dep't of Educ., *March 2020 PSLF Report* (Mar. 31, 2020),
28 <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data> (PSLF and
TEPSLF approval and denial rate calculations in this complaint are based on the publicly
available ED data.).

³⁹ *Id.*

⁴⁰ See U.S. Gov't Accountability Office, GAO-18-547, *Public Service Loan Forgiveness:*

1 clearly with borrowers about program requirements and appropriately supervise its loan servicers
2 is a primary cause of this disaster.

3 49. Indeed, the United States Government Accountability Office (“GAO”) has found
4 that ED’s outreach to borrowers has been deficient, resulting in widespread borrower confusion
5 about basic program requirements.⁴¹ For example, ED failed to provide borrowers with clear
6 information about which employers qualify under PSLF.⁴²

7 50. To make matters worse, ED has not provided accurate information to its PSLF
8 servicer, the primary point of contact for PSLF applicants. According to the GAO, ED knew that
9 its PSLF servicer’s internal PSLF guidance was inaccurate, creating a risk that borrowers’
10 applications could be improperly denied.⁴³

11 51. The Consumer Financial Protection Bureau (“CFPB”) has also found serious
12 shortcomings in ED’s communications with borrowers. For instance, the CFPB reports that
13 borrowers are not consistently informed that consolidating their loans causes them to lose any
14 previous qualifying PSLF payments.⁴⁴ In addition, the CFPB found that borrowers have waited
15 months for responses from ED’s servicers about how to complete the ECF, which is required to
16 certify fulfillment of PSLF criteria.⁴⁵

17 52. ED’s mismanagement of PSLF has been particularly egregious when it comes to
18 repayment plan requirements. Disturbingly, ED’s servicers have steered borrowers into taking
19 repayment plan actions that make them ineligible for PSLF. After borrowers have told ED’s
20 servicers that they are pursuing PSLF, ED’s servicers nonetheless enroll them into a non-

21 _____
22 *Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, at 12-14
(Sept. 2018), <https://www.gao.gov/assets/700/694304.pdf>.

23 ⁴¹ *Id.* at 11-12.

24 ⁴² *Id.* at 18-19; *see also Am. Bar Ass’n v. U.S. Dep’t of Educ.*, 370 F. Supp. 3d 1, 32
(D.D.C. 2019) (holding that ED improperly changed its definition of qualifying public service
employment after borrowers had made PSLF payments in reliance on ED’s regulatory definition).

25 ⁴³ U.S. Gov’t Accountability Office, GAO-18-547, *Public Service Loan Forgiveness:*
Education Needs to Provide Better Information for the Loan Servicer and Borrowers, at 16-18
(Sept. 2018), <https://www.gao.gov/assets/700/694304.pdf>.

26 ⁴⁴ Consumer Fin. Prot. Bureau, *Staying On Track While Giving Back: The Cost of Student*
Loan Servicing Breakdowns for People Serving Their Communities, at 38 (June 2017),
27 https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf.

28 ⁴⁵ *Id.* at 37.

1 qualifying repayment plan, without telling the borrower the plan makes them ineligible for
2 PSLF.⁴⁶

3 53. Moreover, because of how ED has structured administration of PSLF, ED's PSLF
4 servicer finds it "challenging to determine whether borrowers are on qualifying repayment
5 plans."⁴⁷ It is no wonder, then, that PSLF servicer officials report that borrowers are "frequently
6 confused" about repayment plan requirements and sometimes do not know they have not been on
7 a qualifying repayment plan.⁴⁸

8 54. ED has long been aware of these issues, including its failure to provide borrowers
9 with accurate information about repayment plans. In 2010, ED approved a one-time waiver to
10 allow borrowers who had been advised by ED's servicers to enroll in an ineligible plan to receive
11 credit towards PSLF for payments made during that period.⁴⁹

12 55. However, this remedy was available only to a small cohort of borrowers, and
13 nearly a decade later, the GAO reports that ED's outreach is still insufficient and "borrower
14 confusion persists."⁵⁰ Indeed, ED data show that the most common reason for PSLF denials is
15 non-qualifying payments, including being in a non-qualifying repayment plan.⁵¹

16 56. Members of Congress have lambasted ED for making PSLF functionally
17 inaccessible. For instance, in a June 2018 letter, several senators reprimanded ED for allowing its
18 servicers to give borrowers "inconsistent, unclear, and sometimes incorrect guidance" about
19 repayment plans, which prevents borrowers from qualifying for PSLF.⁵² The senators emphasized

20 ⁴⁶ *Id.* at 44.

21 ⁴⁷ U.S. Gov't Accountability Office, GAO-18-547, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, at 22 (Sept. 2018), <https://www.gao.gov/assets/700/694304.pdf>.

22 ⁴⁸ *Id.* at 13.

23 ⁴⁹ See Consumer Fin. Prot. Bureau, *Staying On Track While Giving Back: The Cost of Student Loan Servicing Breakdowns for People Serving Their Communities*, at 44-45 (June 2017), https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf.

24 ⁵⁰ U.S. Gov't Accountability Office, GAO-18-547, *Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers*, at 13 (Sept. 2018), <https://www.gao.gov/assets/700/694304.pdf>.

25 ⁵¹ U.S. Dep't of Educ., *March 2020 PSLF Report* (Mar. 31, 2020), <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data>.

26 ⁵² Letter from Senators Tim Kaine, Sheldon Whitehouse, Tammy Duckworth, and
27 Margaret Wood Hassan to the Secretary of Education (June 19, 2018),
28 <https://www.kaine.senate.gov/press-releases/kaine-whitehouse-duckworth-hassan-press-devos->

1 that ED has known about this problem for some time yet has not fixed it.

2 57. Indeed, earlier in 2018, members of Congress faulted ED for blocking borrowers'
3 access to PSLF by allowing its PSLF servicer to misinform borrowers about repayment plan
4 criteria and creating complicated program requirements, resulting in borrowers being denied
5 PSLF due to no fault of their own.⁵³

6 58. ED's mismanagement of the PSLF program continues.

7 **IV. CONGRESS CREATES TEPSLF AND GIVES ED SIXTY DAYS FOR IMPLEMENTATION**

8 59. Frustrated by ED's mishandling of the PSLF program and the high denial rate, in
9 2018, Congress created the TEPSLF program as an emergency fix.⁵⁴ Congress gave ED clear
10 instructions to quickly create a new loan forgiveness application process that simplifies the
11 pathway to loan forgiveness. Specifically, Congress mandated that ED "develop and make
12 available a *simple* method for borrowers to apply for loan cancellation . . . *within 60 days* of
13 enactment of this Act."⁵⁵

14 60. In addition to the mandated simple application process and deadline for ED to act,
15 by design, TEPSLF expands repayment plan eligibility in an effort to address ED's failures in
16 administering PSLF.

17 61. While under PSLF only IDR plans, Standard plans, or a plan with a monthly
18 payment at least equal to the Standard plan qualify,⁵⁶ under TEPSLF, Graduated and Extended
19 plans are also eligible.⁵⁷ Congress created this broader eligibility criterion to help borrowers hurt
20 by ED's decade-long failure to clearly communicate repayment plan requirements and its failure
21 to address misleading or false information provided by its loan servicers. As several lawmakers
22 explained, "Congress intended TEPSLF to alleviate significant challenges facing borrowers who

23 _____
24 on-failure-to-implement-public-service-loan-forgiveness.

25 ⁵³ Letter from Senators Sheldon Whitehouse, Tim Kaine, Tammy Duckworth, and
26 Margaret Wood Hassan to the Secretary of Education (Mar. 29, 2018),
27 https://www.whitehouse.senate.gov/imo/media/doc/180329_PSLF%20Letter%20to%20Secretary%20DeVos.pdf.

28 ⁵⁴ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 315-16, 132 Stat. 348.

⁵⁵ *Id.* § 315 (emphasis added).

⁵⁶ CCRAA § 455(m) (codified at 20 U.S.C. § 1087e(m)).

⁵⁷ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 315, 132 Stat. 348.

1 have fulfilled their public service requirements but have received bad advice from their student
2 loan servicer or the Department about which repayment plans qualify for forgiveness under
3 PSLF.”⁵⁸

4 62. To further ensure that borrowers have a meaningful opportunity for relief,
5 Congress required that ED remedy the pervasive borrower confusion it created. To this end,
6 Congress instructed ED to conduct outreach that “ensure[s] that borrowers are meeting the terms
7 and conditions of . . . loan cancellation.”⁵⁹ ED must also communicate basic forgiveness
8 requirements to all Direct Loan borrowers.

9 63. Lawmakers initially authorized \$350 million for TEPSLF for ED to forgive public
10 servants’ qualifying student loans on a first-come, first-serve basis.⁶⁰

11 64. Like PSLF, TEPSLF mandates that ED forgive borrowers’ student loan debt if the
12 statutory qualifications are met.

13 65. TEPSLF became law on March 23, 2018.⁶¹

14 66. Therefore, ED’s sixty-day statutory deadline to establish and administer a simple
15 application method for borrowers to apply for TEPSLF was May 22, 2018.

16 67. ED has acknowledged its sixty-day deadline. On May 21, 2018, ED requested an
17 emergency review by the Office of Management and Budget of its plan to collect information
18 from borrowers to determine their eligibility for TEPSLF.⁶² ED explained that emergency
19 clearance was necessary in order for ED to meet Congress’s sixty-day deadline. ED also
20 acknowledged that it was required to implement “a *simple* method for borrowers to apply” by the
21 sixty-day deadline and that “loan forgiveness [was] mandated by the new appropriations law.”⁶³

22 ⁵⁸ Letter from twenty-five senators to the Secretary of Education (Apr. 24, 2019),
23 <https://www.kaine.senate.gov/press-releases/kaine-and-whitehouse-call-on-devos-to-fix-missteps-with-implementation-of-tepslf-program>.

24 ⁵⁹ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 316, 132 Stat. 348.

25 ⁶⁰ *Id.* at § 315.

26 ⁶¹ White House, *President Donald J. Trump Signs H.R. 1625 into Law* (Mar. 23, 2018),
<https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-signs-h-r-1625-law/>.

27 ⁶² Notice, Agency Information Collection Activities; Comment Request; Temporary
Expansion of Public Service Loan Forgiveness (TE-PSLF), 83 Fed. Reg. 24,091 (May 24, 2018),
<https://www.govinfo.gov/content/pkg/FR-2018-05-24/pdf/2018-11109.pdf>.

28 ⁶³ *Id.* (emphasis added).

1 68. On May 23, 2018, in a press release, ED announced the launch of an expanded
2 opportunity for student loan debt forgiveness.⁶⁴ In the release, ED characterized the program as
3 an “expansion of the Public Service Loan Forgiveness (PSLF) Program.”

4 69. In launching TEPSLF, however, ED recycled the existing PSLF application
5 process—including the PSLF application form already in use—and added an additional step. To
6 apply for TEPSLF, borrowers must submit the PSLF application for forgiveness, and have that
7 application denied only because some or all of the loan payments were not made under a PSLF-
8 qualifying repayment plan, and, after applying for PSLF, send a request to ED by email to have
9 their eligibility for PSLF reconsidered under TEPSLF’s expanded list of qualifying repayment
10 plans.⁶⁵

11 70. The PSLF form, which ED requires borrowers to use to apply for TEPSLF,
12 contains PSLF eligibility criteria, not TEPSLF criteria.⁶⁶ Rather than create a simple and
13 streamlined application process for TEPSLF, ED requires borrowers to apply for a program for
14 which they do not qualify, be denied, and then request reconsideration.

15 71. In September 2018, Congress appropriated an additional \$350 million to the
16 TEPSLF program.⁶⁷ Congress gave ED this additional funding to “ensure that even more students
17 can qualify for loan forgiveness under [TEPSLF] and [to] reduce[] concerns that funding
18 availability would limit eligibility in the immediate future.”⁶⁸ This second appropriation brought
19

20 ⁶⁴ U.S. Dep’t of Educ., *U.S. Department of Education Announces Opportunity for Federal*
21 *Student Loan Borrowers to be Reconsidered for Public Service Loan Forgiveness* (May 23,
2018), [https://www.ed.gov/news/press-releases/us-department-education-announces-opportunity-
federal-student-loan-borrowers-be-reconsidered-public-service-loan-forgiveness](https://www.ed.gov/news/press-releases/us-department-education-announces-opportunity-federal-student-loan-borrowers-be-reconsidered-public-service-loan-forgiveness).

22 ⁶⁵ U.S. Dep’t of Educ., *If your PSLF application was denied because some or all of your*
23 *payments were not made on a qualifying repayment plan for PSLF, you may be able to receive*
24 *loan forgiveness under a temporary opportunity*, [https://studentaid.ed.gov/sa/repay-
loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-
forgiveness](https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service/temporary-expanded-public-service-loan-forgiveness).

25 ⁶⁶ U.S. Dep’t of Educ., *Public Service Loan Forgiveness (PSLF): Application for*
26 *Forgiveness*, [https://studentaid.gov/sites/default/files/public-service-application-for-
forgiveness.pdf](https://studentaid.gov/sites/default/files/public-service-application-for-forgiveness.pdf).

27 ⁶⁷ Department of Defense and Labor, Health and Human Services, and Education
28 Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, § 313,
132 Stat. 2981.

⁶⁸ S. Rep. No. 115-289 (2019) (Conf. Rep.).

1 the total amount of relief available to public servants under TEPSLF to \$700 million.

2 **V. ED FAILS TO CREATE A SIMPLE APPLICATION METHOD OR MEANINGFULLY**
 3 **ADDRESS BORROWER CONFUSION**

4 72. As with PSLF, ED has made TEPSLF virtually inaccessible. Since the launch of
 5 TEPSLF, ED has denied about 94% of applications.⁶⁹ As a result, only 1,310 out of the millions
 6 of borrowers potentially eligible for TEPSLF have obtained relief.⁷⁰

7 73. As of March 2020, ED has awarded only about \$56 million—a mere 8%—of the
 8 \$700 million Congress intended public servants to receive in student loan debt relief under
 9 TEPSLF.⁷¹

10 74. Congress’s instructions to ED in the TEPSLF statute were clear: “develop and
 11 make available a *simple* method for borrowers to apply for loan cancellation . . . *within 60 days*”
 12 of TEPSLF’s enactment.⁷²

13 75. Although ED acknowledged the sixty-day deadline, ultimately, ED missed
 14 Congress’s firm deadline. Years later, ED has yet to implement TEPSLF as Congress mandated.
 15 As ED’s staggering TEPSLF denial rate shows, despite Congress’s deadline having past two
 16 years ago, applying for TEPSLF is far from simple.

17 76. In September 2019, almost a year and a half after ED’s deadline, the GAO
 18 determined that ED has “not created a borrower-friendly TEPSLF process.”⁷³ For instance, the
 19 GAO found that ED has not provided borrowers with sufficient information about TEPSLF,
 20 noting that some of ED’s key online resources do not include any information on TEPSLF.⁷⁴ In
 21 particular, the GAO found it problematic that ED’s online help tool contains detailed information
 22 only for PSLF, not TEPSLF.

23 ⁶⁹ U.S. Dep’t of Educ., *March 2020 PSLF Report* (Mar. 31, 2020),
 24 <https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/pslf-data>.

24 ⁷⁰ *Id.*

25 ⁷¹ *Id.*

25 ⁷² Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 315, 132 Stat. 348
 26 (emphasis added).

26 ⁷³ U.S. Gov’t Accountability Office, GAO-19-595, *Public Service Loan Forgiveness:*
 27 *Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion*, at 10
 (Sept. 2019), <https://www.gao.gov/assets/710/701157.pdf>.

28 ⁷⁴ *Id.* at 19-20.

1 77. ED has acknowledged that it should “do[] a better job of explaining [TEPSLF]
2 requirements to borrowers in entrance counseling and early in repayment to improve the
3 likelihood that borrowers interested in [forgiveness] meet all of the requirements.”⁷⁵

4 78. In addition, the GAO has found a risk of TEPSLF denial errors.⁷⁶ This risk derives
5 in part from ED’s failure to ensure that its TEPSLF servicer is receiving accurate loan payment
6 histories from borrowers’ other loan servicers. This compromises the accuracy of ED’s qualifying
7 payment counts.

8 79. Adding insult to injury, according to the GAO, ED does not consistently inform
9 borrowers how to contest a denied TEPSLF application.⁷⁷ While borrowers can request an
10 additional review or file a complaint, ED does not mention these options in its denial letters. ED
11 is obscuring these options from borrowers in part because reviews are time-consuming.⁷⁸

12 80. All of the stakeholders the GAO spoke with in its review of TEPSLF, including
13 ED officials, ED’s TEPSLF servicer, and representatives from organizations representing
14 borrowers, agreed that ED’s requirement that borrowers submit a PSLF application in order to
15 apply for TEPSLF is confusing for borrowers. The GAO’s review of borrower complaints found
16 that borrowers expressed frustration and confusion about why they were being asked to submit an
17 application for PSLF—a program that they knew they did not qualify for—in order to seek loan
18 forgiveness under TEPSLF.⁷⁹

19 81. Congress also has decried ED’s TEPSLF failures. In June 2018, four senators
20

21 ⁷⁵ U.S. Dep’t of Educ., *Written Testimony, Jeff Appel, Federal Student Aid, U.S.*
22 *Department of Education*, congressional hearing “Broken Promises: Examining the Failed
Implementation of the Public Service Loan Forgiveness Program, at 6 (Sept. 19, 2019),
23 <https://edlabor.house.gov/imo/media/doc/AppelTestimonyPSLF091919.pdf>.

24 ⁷⁶ U.S. Gov’t Accountability Office, GAO-19-595, *Public Service Loan Forgiveness:*
Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion, at 17
(Sept. 2019), <https://www.gao.gov/assets/710/701157.pdf>.

25 ⁷⁷ *Id.* at 15.

26 ⁷⁸ See Stacy Cowley, *The Student Loan Appeal Process the Government Doesn’t Tell You*
About, N.Y. Times (Feb. 17, 2020), [https://www.nytimes.com/2020/02/17/business/federal-](https://www.nytimes.com/2020/02/17/business/federal-student-loan-appeals.html)
[student-loan-appeals.html](https://www.nytimes.com/2020/02/17/business/federal-student-loan-appeals.html).

27 ⁷⁹ U.S. Gov’t Accountability Office, GAO-19-595, *Public Service Loan Forgiveness:*
Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion, at 9 (Sept.
28 2019), <https://www.gao.gov/assets/710/701157.pdf>.

1 wrote to ED to urge ED to implement TEPSLF as required by law.⁸⁰ The senators faulted ED for
 2 creating “eligibility criteria for TEPSLF [that] are significantly more restrictive than [Congress’s]
 3 legislation ever proposed.” Specifically, the senators chastised ED for requiring borrowers to
 4 apply for PSLF in order to be considered for TEPSLF. They explained that, to align with the
 5 authorizing statute’s requirement of a “simple” method, borrowers should be able to apply for
 6 TEPSLF without first applying for PSLF. According to the senators, “Few borrowers will
 7 understand that they should fill out a form that explicitly tells them they are not eligible.”

8 82. In its response to the senators’ June 2018 letter, ED explained that it implemented
 9 what it believes is “the *most efficient* methodology.”⁸¹ Congress, however, instructed ED to create
 10 a method that is simple *for borrowers*, not what is most efficient for ED.

11 83. Almost a year later, in April 2019, twenty-five senators wrote to ED expressing
 12 dismay at ED’s gross mismanagement of TEPSLF.⁸² The senators described TEPSLF as
 13 “unnecessarily complicated, confusing, and frustrating for borrowers.” They concluded that ED is
 14 not in compliance with the statutory requirement to create a simple application method because
 15 ED has instead implemented a “highly complex application process.”

16 84. The senators also chastised ED for delaying faithful implementation of TEPSLF,
 17 stating that ED’s “lack of action suggests that the Department has treated TEPSLF, and the
 18 applicants to this program, as an unwanted burden.” They demanded “dramatically enhanced
 19 outreach” by ED to ensure that borrowers are aware of TEPSLF and have the information they
 20 need to access relief. The senators also specifically faulted ED for failing to conduct outreach to
 21 all Direct Loan borrowers, as mandated by statute, and demanded that ED correct its
 22

23 ⁸⁰ Letter from Senators Tim Kaine, Sheldon Whitehouse, Tammy Duckworth, and
 24 Margaret Wood Hassan to the Secretary of Education (June 19, 2018),
<https://www.kaine.senate.gov/press-releases/kaine-whitehouse-duckworth-hassan-press-devos-on-failure-to-implement-public-service-loan-forgiveness>.

25 ⁸¹ U.S. Dep’t of Educ., Letter to Senator Tim Kaine (Oct. 10, 2018),
 26 <https://www.kaine.senate.gov/imo/media/doc/ED's%20response%20to%20Sen.%20Kaine's%20letter%2010.11.18.pdf>.

27 ⁸² Letter from twenty-five senators to the Secretary of Education (Apr. 24, 2019),
 28 <https://www.kaine.senate.gov/press-releases/kaine-and-whitehouse-call-on-devos-to-fix-missteps-with-implementation-of-tepslf-program>.

1 noncompliance immediately.

2 85. Members of the U.S. House of Representatives have also expressed deep concern
3 about ED’s mismanagement of TEPSLF. For instance, in October 2019, forty-eight
4 representatives wrote a letter criticizing ED for “creat[ing] a disaster which completely subverts
5 Congressional intent.”⁸³ The representatives explained that “it was never Congress’s intent to
6 make these programs functionally inaccessible, which the Department has ensured by erecting a
7 series of barriers throughout the application and approval processes.” The representatives also
8 faulted ED for inconsistency between its public commitment to run the TEPSLF program and its
9 failure to administer it.

10 86. Frustrated by ED’s intransigence, in September 2019, the House Subcommittee on
11 Higher Education and Workforce Investment held a public hearing on ED’s failure to administer
12 PSLF and TEPSLF entitled, “Broken Promises: Examining the Failed Implementation of the
13 Public Service Loan Forgiveness Program.”⁸⁴ Members of the subcommittee reprimanded ED for
14 denying essentially every TEPSLF application, in violation of Congress’s clear intent to expand
15 access to relief. They also admonished ED for creating an unnavigable TEPSLF process instead
16 of the “simple” method Congress mandated.

17 87. Members at the hearing faulted ED for not implementing the GAO’s numerous
18 recommendations for bringing TEPSLF in line with its statutory design and urged ED to make an
19 immediate good faith effort to comply.

20 88. In January 2020, after repeated warnings from Congress and more than a year and
21 a half after ED’s sixty-day deadline to implement a simple TEPSLF application method, ED
22 proposed consolidating the PSLF and TEPSLF application forms.⁸⁵ The comment period for ED’s

23 _____
24 ⁸³ Letter from forty-eight U.S. representatives to the Secretary of Education (Oct. 3,
25 <https://porter.house.gov/sites/porter.house.gov/files/porter%20letter%20to%20devos%20re%20tepslf%20and%20pslf.pdf>).

26 ⁸⁴ *Broken Promises: Examining the Failed Implementation of the Public Service Loan*
27 *Forgiveness Program: Hearing Before the House Comm. on Educ. and Labor*, 116th Cong. (Sept.
28 19, 2019), <https://www.youtube.com/watch?v=tkVnHVvyUO4>.

⁸⁵ Notice, Agency Information Collection Activities; Comment Request; Application and
Employment Certification for Public Service Loan Forgiveness, 85 Fed. Reg. 5405 (Jan. 30,
2020), <https://www.govinfo.gov/content/pkg/FR-2020-01-30/pdf/2020-01715.pdf>.

1 proposal closed on March 30, 2020. As of the filing of this complaint, the proposal has not been
2 implemented.

3 89. Even if this proposal is implemented, it would not cure ED’s unlawfulness. It
4 would not address the myriad other problems with ED’s administration of TEPSLF, such as the
5 pervasive communication, payment count, and appeals procedure failures identified by Congress,
6 the GAO, and borrowers. In the words of one lawmaker, “this change alone does not satisfy the
7 department’s responsibility to faithfully implement the law.”⁸⁶

8 90. In addition to ED’s numerous failures in its administration of the PSLF and
9 TEPSLF programs, since her appointment, Secretary DeVos has more broadly demonstrated her
10 hostility towards these programs.

11 91. Secretary DeVos has publicly rejected Congress’s purpose in creating PSLF and
12 TEPSLF: to alleviate the burden of student loan debt for public servants. At a congressional
13 hearing, for instance, Secretary DeVos explained that she has proposed eliminating PSLF because
14 “[w]e don’t think one type of job, one type of a role, should be incentivized over another.”⁸⁷

15 92. Secretary DeVos and ED, however, cannot disregard congressional commands and
16 deadlines or block public servants from obtaining the critical relief that they were promised.

17 93. Secretary DeVos and ED’s attack on these programs aligns with the current
18 administration’s priorities. In each of the current administration’s past four proposed budgets—
19 for 2021,⁸⁸ 2020,⁸⁹ 2019,⁹⁰ and 2018⁹¹—the administration recommended eliminating PSLF.

20 ⁸⁶ Cory Turner, *Education Dept. Unveils Fix for Student Loan Program’s ‘Bureaucratic*
21 *Nightmare*, NPR (Jan. 31, 2020), <https://www.npr.org/2020/01/31/801367031/education-dept-unveils-fix-for-student-loan-programs-bureaucratic-nightmare>.

22 ⁸⁷ *Examining Policies and Priorities of the U.S. Dep’t of Educ.: Hearing Before the House*
23 *Comm. on Educ. and Labor*, 116th Cong. (Apr. 10, 2019) at 04:01:57 (testimony of Betsy DeVos,
Secretary of Education), <https://www.c-span.org/video/?459644-1/ed-ucation-policy-hearing-secretary-devos>.

24 ⁸⁸ Fiscal Year 2021 Budget of the U.S. Government, at 41, 114 (Feb. 10, 2020),
25 https://www.whitehouse.gov/wp-content/uploads/2020/02/budget_fy21.pdf (“[T]he Budget closes
loopholes currently allowing high-earning graduate-degree holding borrowers to avoid repaying
their student loans, leaving taxpayers holding the bag.”).

26 ⁸⁹ Fiscal Year 2020 Budget of the U.S. Government, at 32, 115 (Mar. 11, 2019),
<https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.

27 ⁹⁰ Fiscal Year 2019 Budget of the U.S. Government, at 41, 125 (Feb. 2018),
<https://www.govinfo.gov/content/pkg/BUDGET-2019-BUD/pdf/BUDGET-2019-BUD.pdf>.

28 ⁹¹ Fiscal Year 2018 Budget of the U.S. Government, at 20, 33 (May 23, 2017),
<https://www.govinfo.gov/content/pkg/BUDGET-2018-BUD/pdf/BUDGET-2018-BUD.pdf>.

1 94. Despite this open hostility toward the law designed to help public servants, ED
2 must implement TEPSLF as Congress mandated—as a meaningful opportunity for public
3 servants to secure relief from crushing debt, so that they can serve the public while maintaining
4 quality of life and supporting their families. At two years past ED’s TEPSLF deadline, public
5 servants have already waited far too long.

6 **VI. ED’S FAILURE TO IMPLEMENT TEPSLF IN THE TIMEFRAME AND MANNER**
7 **MANDATED BY CONGRESS HARMS CALIFORNIA INCLUDING THE STATE’S PUBLIC**
8 **SCHOOLS, LAW ENFORCEMENT, AND PUBLIC HOSPITALS**

9 95. ED’s failure to implement TEPSLF within the statutory deadline and as mandated
10 by Congress has caused and is causing injury to California, its public entities and institutions, and
11 its residents.

12 96. California is home to tens of thousands of borrowers that qualify for PSLF or
13 TEPSLF. The loss of promised loan forgiveness to these borrowers injures California’s public
14 entities and institutions that rely on these borrowers as current and prospective public servants.
15 ED’s failures upset California’s public workforces, disrupt California’s statutory and regulatory
16 interests and make it harder to fulfill the missions of California’s public institutions, cause harm
17 to tens of thousands of California’s residents, and damage California’s economy.

18 97. Instead of opening a pathway to public service with the promise of loan
19 forgiveness, ED is closing the door.

20 98. Public employees who have relied on the promise of loan forgiveness through
21 PSLF and TEPSLF have been hired into critical public service jobs in California, and the State
22 has invested substantial resources in recruiting, hiring, and training these employees. The State
23 relies on these employees to provide important services.

24 99. California employees are leaving state service because ED has denied or is
25 expected to deny their PSLF and TEPSLF applications and they can no longer afford to work in
26 public service. This harms California. The State loses the investments it made in these
27 employees’ hiring, training, and development and loses experienced public servants.

28 100. In addition, California needs to expend additional resources recruiting, hiring, and

1 training replacements for these employees.

2 101. Thus, California is harmed when public service employees are deterred and
3 discouraged from staying in their public service positions by the broken promises of PSLF and
4 TEPSLF, directly contrary to the purposes of these loan forgiveness programs to encourage and
5 enable public service.

6 102. California also is harmed when its residents are deterred or discouraged from
7 entering public service careers. The failure to implement PSLF and TEPSLF and the resulting
8 loss of public servants adversely impacts the size and diversity of the talent pool of employees,
9 which makes it more difficult for California's public institutions to fulfill their missions.
10 California relies on a rich and diverse talent pool for its public employees to satisfy the missions
11 of its public agencies and institutions.

12 103. California's injuries related to the talent pool of public service employees are
13 concrete and imminent. ED's failures presently constrain California's recruitment efforts for
14 public service employees and deter prospective employees. As problems with ED's
15 administration of PSLF and TEPSLF have come to light, many borrowers have been deterred
16 from entering public service. Unable to rely on PSLF and TEPSLF or to repay student loans on a
17 public service salary without assistance, these borrowers are priced out of public service. This
18 shrinks the pool of applicants from which the State can hire for critical jobs in public safety,
19 education, and health care, among other fields.

20 104. Moreover, California residents are being discouraged from pursuing degrees and
21 programs geared towards public service, such as teaching and social work, because PSLF and
22 TEPSLF are functionally inaccessible and they cannot afford to repay loans on a public service
23 salary.

24 105. The depletion of the talent pool from which California can hire causes the State to
25 expend more time and to incur increased costs in its recruitment efforts. This drain on
26 California's resources is caused by ED's mismanagement of PSLF and TEPSLF and reduces the
27 size and diversity of the talent pool from which California can recruit.

28 106. Thus, ED's failures have caused and continue to cause injury to California by

1 directly and indirectly harming the workforces of California state public entities that perform
2 critical functions, including public schools, law enforcement agencies, and public hospitals. This
3 injures the ability of California's public institutions to fulfill their missions.

4 107. For example, public education is a fundamental right under the California
5 Constitution, which provides for the formation of public schools including kindergarten,
6 elementary schools, secondary schools, technical schools, and state colleges.⁹² California public
7 schools often struggle to recruit and retain qualified teachers. California educates more than six
8 million children in its K-12 public schools, over half of whom are economically disadvantaged.⁹³
9 Given the pivotal role of education in California's future and because education is a fundamental
10 interest in California, ED's actions that harm the size and diversity of the talent pool of public
11 school teachers are of vital concern to the State.

12 108. As another example, law enforcement is impacted by ED's failure to implement
13 PSLF and TEPSLF. The Attorney General is the chief law officer of California, with the
14 responsibility to see that the laws of the State are uniformly and adequately enforced.⁹⁴ This
15 includes direct supervision over district attorneys, sheriffs, and other law enforcement officers
16 that preserve the peace and investigate, detect, prosecute, and punish crimes. In California,
17 hundreds of law enforcement agencies qualify as public service employers under the PSLF and
18 TEPSLF programs. Public safety, law enforcement, preventing and prosecuting crime, and
19 improving the administration of justice are significant state interests. ED's actions that harm the
20 size and diversity of the talent pool of law enforcement employees are of vital concern to the
21 State.

22 109. ED's failure to implement PSLF and TEPSLF and the resulting shrinkage of
23 California's talent pool is particularly injurious to the State because California is already
24 experiencing severe shortages in critical public service fields.

25 ⁹² Cal. Const., art. IX.

26 ⁹³ Joseph Hayes et al., *K-12 Education, California's Future*, Public Policy Institute of
27 California (Jan. 2020), [https://www.ppic.org/wp-content/uploads/californias-future-k-12-
education-january-2020.pdf](https://www.ppic.org/wp-content/uploads/californias-future-k-12-education-january-2020.pdf).

28 ⁹⁴ Cal. Const., art. V, § 13.

1 110. For instance, California has a statewide teacher shortage, especially in important
2 fields such as the sciences, math, and instruction for students with disabilities.⁹⁵ Survey data show
3 that 75% of school districts in California are experiencing teacher shortages and that most of
4 these shortages are getting worse.⁹⁶

5 111. In addition, by 2030, California is projected to suffer the worst nursing shortage in
6 the country⁹⁷ and to face a shortfall of 8,800 primary care physicians.⁹⁸

7 112. The critical nature of student loan debt relief programs such as PSLF and TEPSLF
8 for public service employers in recruiting and retention is widely recognized. For instance,
9 according to the United States Department of Defense, PSLF “has been an important recruitment
10 and retention tool for the military.”⁹⁹ The Navy has also found that the “PSLF Program provides a
11 powerful incentive for service-minded people to pursue a career in the Armed Forces of the
12 United States, including the Navy.”¹⁰⁰

13 113. Social worker representatives describe student loan forgiveness as “essential to
14 recruit[ing] students to pursue degrees in social work and help[ing] those students graduating
15 from social work programs enter into public service.”¹⁰¹ They further explain that programs like
16

17 ⁹⁵ Howard Blume, *Newsom’s budget includes \$900 million to address California teacher*
18 *shortage*, L.A. Times (Jan. 11, 2020), <https://www.latimes.com/california/story/2020-01-11/newsoms-budget-includes-900-million-to-address-california-teacher-shortage>.

19 ⁹⁶ Desiree Carver-Thomas and Linda Darling-Hammond, *Addressing California’s*
20 *Growing Teacher Shortage: 2017 Update*, Learning Policy Institute (Feb. 8, 2017),
21 <https://learningpolicyinstitute.org/product/addressing-californias-growing-teacher-shortage-2017-update-report>.

22 ⁹⁷ See U.S. Dep’t of Health & Human Servs., *Supply and Demand Projections of the*
23 *Nursing Workforce: 2014-2030* (July 21, 2017),
24 https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/NCHWA_HRSA_Nursing_Report.pdf.

25 ⁹⁸ Ron Shinkman, *California Grapples with Growing Physician Shortage for Low-Income*
26 *Patients*, California Health Report (Sept. 17, 2018), <https://www.calhealthreport.org/2018/09/17/california-grapples-growing-physician-shortage-low-income-patients/>.

27 ⁹⁹ U.S. Dep’t of Defense, *Information Paper* (Jan. 10, 2018),
28 https://245cca43-392a-45aa-83d3-6f4d990b9d61.filesusr.com/ugd/c11932_b61245d2b9a846c49f718d2ce6bf6b91.pdf.

¹⁰⁰ U.S. Navy, *Department of Defense Information Paper* (Nov. 14, 2017),
<https://edlabor.house.gov/imo/media/doc/2017-11-14%20RFI%20Public%20Service%20Loan%20Forgiveness%20Impact3.pdf>.

¹⁰¹ Letter from Council on Social Work Education and National Association of Social Workers to Senators Lamar Alexander and Patricia Murray (July 20, 2015),

1 PSLF and TEPSLF are integral to recruiting social workers to support the country's need for
 2 important social services such as mental health care and child welfare. Similarly, student loan
 3 forgiveness has been described as a "powerful recruitment tool" for doctors to work in hard-to-fill
 4 positions at community health centers¹⁰² and in health care professional shortage areas.¹⁰³

5 114. According to the National Fraternal Order of Police, student loan forgiveness is
 6 vital to states' ability to hire law enforcement professionals and to protect the public. The
 7 National Fraternal Order of Police explains that "PSLF is a benefit which allows our local, State
 8 and Federal law enforcement agencies to recruit highly trained and educated individuals that want
 9 to serve and protect for a living."¹⁰⁴

10 115. ED has acknowledged that Congress's public service loan forgiveness programs
 11 were designed to incentivize recruitment and retention for public service jobs. For instance, in
 12 ED's PSLF regulation, ED states that PSLF "is intended to encourage individuals to enter and
 13 continue in full-time public service employment by forgiving the remaining balance of their
 14 Direct loans."¹⁰⁵

15 116. ED's failure to implement PSLF and TEPSLF harms California in additional ways,
 16 including wasting much of the time and resources the State expends certifying borrowers' ECFs.
 17 ED requires that borrowers submit at least one ECF to be considered for PSLF and TEPSLF and
 18 encourages borrowers to submit an ECF annually or upon change of employment.¹⁰⁶ Borrowers,
 19

20 [https://245cca43-392a-45aa-83d3-
 6f4d990b9d61.filesusr.com/ugd/c11932_86a021fc534a43828d430bd749489a45.pdf](https://245cca43-392a-45aa-83d3-6f4d990b9d61.filesusr.com/ugd/c11932_86a021fc534a43828d430bd749489a45.pdf).

21 ¹⁰² Letter from South Carolina Primary Health Care Association to Senator Lindsey
 Graham (May 15, 2018),

22 [https://245cca43-392a-45aa-83d3-
 6f4d990b9d61.filesusr.com/ugd/c11932_7629d3ebb5b4487b8234797c15d9e174.pdf](https://245cca43-392a-45aa-83d3-6f4d990b9d61.filesusr.com/ugd/c11932_7629d3ebb5b4487b8234797c15d9e174.pdf).

23 ¹⁰³ See Ass'n of Am. Med. Coll., *Statement for the Record Submitted by the Association of
 24 American Medical Colleges (AAMC) to the House of Representatives Committee on Small
 Business: "The Doctor is Out. Rising Student Loan Debt and the Decline of the Small Medical
 25 Practice,"* (June 11, 2019), [https://www.aamc.org/system/files/c/1/498034-
 aamcstatementtothehousesmallbusinesscommitteeregardingmedicaled.pdf](https://www.aamc.org/system/files/c/1/498034-aamcstatementtothehousesmallbusinesscommitteeregardingmedicaled.pdf).

26 ¹⁰⁴ Letter from National Fraternal Order of Police to Senators Lamar Alexander and
 Patricia Murray (Oct. 19, 2017), <https://fop.net/CmsDocument/Doc/PSLF%20Letter.pdf>.

27 ¹⁰⁵ 34 C.F.R. § 685.219(a).

28 ¹⁰⁶ U.S. Dep't of Educ., *Why and When to Submit the Employment Certification Form*,
[https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/employment-
 certification-form](https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/employment-certification-form).

1 however, may submit ECFs as frequently as they wish. To certify an ECF, employers verify the
2 dates and full- or part-time status of the borrower's employment, as well as the nature of the
3 employer.

4 117. Certifying ECFs uses California's resources, as state employees must access and
5 review official state records on dates and full- or part-time status of borrowers' employment.

6 118. ED's denial of essentially every PSLF and TEPSLF application causes California
7 to lose the return on its investment in certifying ECFs.

8 119. In addition, ED's failure to implement TEPSLF requires the State to expend even
9 more resources certifying ECFs than if ED had faithfully implemented TEPSLF. If ED had
10 implemented a simple TEPSLF application process two years ago, as Congress instructed, more
11 California public servants would have had their student loan debt forgiven sooner. Instead, ED's
12 confusing and error-prone application process prevents California public servants from timely
13 obtaining relief, and requires that they submit additional ECFs over a longer period of time. The
14 State's need to expend resources certifying these additional ECFs is caused by ED's failure to
15 timely implement TEPSLF.

16 120. California, through its public colleges and universities and other state agencies,
17 also has invested in educating and counseling borrowers, students, and employees on PSLF and
18 TEPSLF requirements. For instance, under California law, California community colleges must
19 annually provide employees with a summary of PSLF, information on participation requirements,
20 and answers to common questions.¹⁰⁷

21 121. In addition to educating residents on PSLF and TEPSLF criteria, state agencies
22 expend time, resources, and funds helping residents navigate ED's convoluted TEPSLF
23 application process. For instance, state universities counsel students and alumni on TEPSLF
24 requirements and how to overcome the barriers ED has placed in the way of TEPSLF access.
25 These increased expenditures are fairly traceable to ED's mismanagement of TEPSLF and would
26 not be necessary if ED had followed Congress's instruction to create a "simple" application
27 method within sixty days.

28 ¹⁰⁷ Cal. Educ. Code § 87489.

1 122. ED's failure to implement PSLF and TEPSLF deprives the State of its investments
2 in, and promised return of, a financial pathway for Californians into critical public service jobs as
3 well as the retention incentive of debt relief for current public servants.

4 **VII. ED'S FAILURE TO IMPLEMENT TEPSLF IN THE TIMEFRAME AND MANNER**
5 **MANDATED BY CONGRESS HARMS CALIFORNIA BORROWERS AND RESIDENTS**

6 123. ED's mismanagement of TEPSLF causes concrete and particularized injury to
7 California by directly and indirectly harming its residents, including student loan borrowers and
8 their families.

9 124. California public servants and their families suffer substantial economic harm
10 because of PSLF and TEPSLF's inaccessibility.

11 125. Many borrowers' student loan debt constitutes a significant portion of their salary.
12 For instance, the average student loan debt for teachers is one-third or more of their average
13 annual salary.¹⁰⁸ For many doctors, their student loan debt nearly equals their annual salary.¹⁰⁹ In
14 addition, the total amount of federal student loan debt among Californians who graduated
15 between 2014 and 2016 alone exceeded \$10 billion.¹¹⁰

16 126. Faced with this crushing debt, Californians have planned their careers and lives
17 around access to PSLF and TEPSLF. For instance, Californians have accepted public service jobs
18 with lower pay than private sector jobs, relying on the promise of loan forgiveness through PSLF

19 ¹⁰⁸ See Nat'l Educ. Ass'n, *Rankings of the States 2018 and Estimates of School Statistics*
20 *2019*, NEA Research, at 8 (Apr. 2019),
21 <http://www.nea.org/assets/docs/2019%20Rankings%20and%20Estimates%20Report.pdf>; Anne
22 Podolsky & Tara Kini, *How Effective Are Loan Forgiveness and Service Scholarships for*
23 *Recruiting Teachers?*, Learning Policy Institute, at 1 (Apr. 2016),
24 [https://learningpolicyinstitute.org/sites/default/files/product-files/How_Effective_Are-
25 Loan_Forgiveness_and_Service-Scholarships_Recruiting_Teachers.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/How_Effective_Are-Loan_Forgiveness_and_Service-Scholarships_Recruiting_Teachers.pdf).

26 ¹⁰⁹ See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Employment and*
27 *Wages, Physicians and Surgeons* (May 2018),
28 <https://www.bls.gov/oes/2018/may/oes291069.htm>; Ass'n of Am. Med. Coll., *Statement for the*
Record Submitted by the Association of American Medical Colleges (AAMC) to the House of
Representatives Committee on Small Business: "The Doctor is Out. Rising Student Loan Debt
and the Decline of the Small Medical Practice," at 1 (June 11, 2019),
[https://www.aamc.org/system/files/c/1/498034-
aamcstatementtothehousesmallbusinesscommitteeregardingmedicaled.pdf](https://www.aamc.org/system/files/c/1/498034-aamcstatementtothehousesmallbusinesscommitteeregardingmedicaled.pdf).

¹¹⁰ Hans Johnson, *New Federal Data Sheds Light on Student Debt in California*, Public
Policy Institute of California (Aug. 9, 2019), [https://www.pplic.org/blog/new-federal-data-sheds-
light-on-student-debt-in-california/](https://www.pplic.org/blog/new-federal-data-sheds-light-on-student-debt-in-california/).

1 and TEPSLF to fund their children's education, pay for the care of elderly parents, and purchase
 2 homes. These Californians struggle to afford life necessities while burdened with student loan
 3 debt Congress instructed ED to forgive.

4 127. Californians also suffer significant indirect harms beyond economic injury.
 5 Student loan debt is a source of anxiety, stress, and depression for borrowers.¹¹¹ High financial
 6 debt has also been correlated with sleep disturbances,¹¹² obesity,¹¹³ high blood pressure,¹¹⁴ and a
 7 number of other health problems. Moreover, borrowers with high student loan debt are more
 8 likely to delay or forego important life milestones, such as marriage,¹¹⁵ parenthood,¹¹⁶ and home
 9 ownership.¹¹⁷

10 128. ED's complicated TEPSLF application process compounds the psychological
 11 distress that borrowers endure. Borrowers must fight to overcome the obstacles ED has erected
 12 around TEPSLF access, all while worrying about how to afford housing and support their
 13 families.

14 129. To make matters worse, interest continues to accrue on borrowers' federal student
 15 loans while they wait for ED to make PSLF and TEPSLF accessible. Borrowers have been
 16 deprived of a meaningful opportunity to access TEPSLF for two years, since ED's deadline to
 17

18 ¹¹¹ See Melanie Lockert, *Mental Health Survey: 1 in 15 High Student Debt Borrowers*
 19 *Considered Suicide*, Student Loan Planner (Sept. 4, 2019),
 20 <https://www.studentloanplanner.com/mental-health-awareness-survey/>.

21 ¹¹² See Shannon Insler, *The Mental Toll of Student Debt: What Our Survey Shows*, Student
 22 Loan Hero (Sept. 7, 2017), <https://studentloanhero.com/featured/psychological-effects-of-debt-survey-results/>.

23 ¹¹³ See Eva Munster et al., *Over-indebtedness as a Marker of Socioeconomic Status and*
 24 *Its Association with Obesity: A Cross-Sectional Study*, BMC Pub. Health (2009),
 25 <https://bmcpublikealth.biomedcentral.com/articles/10.1186/1471-2458-9-286>.

26 ¹¹⁴ See Elizabeth Sweet et al., *The High Price of Debt: Household Financial Debt and Its*
 27 *Impact on Mental and Physical Health*, Soc. Sci. & Med. (2013),
 28 <https://www.sesp.northwestern.edu/docs/publications/10412279465787f48b82f83.pdf>.

¹¹⁵ See Fenaba R. Addo et al., *The Changing Nature of the Association Between Student*
Loan Debt and Marital Behavior in Young Adulthood, J. of Fam. & Econ. Issues (2019),
<https://link.springer.com/article/10.1007/s10834-018-9591-6>.

¹¹⁶ See Michael Nau et al., *Can't Afford a Baby? Debt and Young Americans*, Research in
 Soc. Stratification & Mobility (2015),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5231614/>.

¹¹⁷ See Alvaro A. Mezza et al., *Student Loans and Homeownership*, Finance and
 Economics Discussion Series, Federal Reserve Board (2016),
<https://www.federalreserve.gov/econres/feds/files/2016010r1pap.pdf>.

1 implement TEPSLF passed. The interest that has accrued during ED’s delay further threatens
2 borrowers’ ability to afford life necessities and to support themselves and their families.

3 130. Secretary DeVos has acknowledged that unpaid student loan debt hurts borrowers
4 and their communities. For instance, she explained that unpaid “loans aren’t just financial
5 products. They represent students and families ‘in distress’ with very real implications for our
6 economy and our future.”¹¹⁸

7 **VIII. ED’S FAILURE TO IMPLEMENT TEPSLF IN THE TIMEFRAME AND MANNER**
8 **MANDATED BY CONGRESS HARMS CALIFORNIA’S QUASI-SOVEREIGN INTERESTS**

9 131. ED’s failure to follow Congress’s instructions to create a simple application
10 method for TEPSLF within sixty days causes concrete and particularized injury to California by
11 directly and indirectly harming its “quasi-sovereign” interests in the health and well-being—both
12 physical and economic—of its residents.

13 132. In particular, California’s interests include ensuring the financial well-being of its
14 citizens; supporting its residents’ ability to afford housing and to start and raise families; and
15 protecting its citizens’ mental and physical health.

16 133. ED’s failure to implement PSLF and TEPSLF impacts a substantial portion of
17 California’s population. Individual borrowers and their families have suffered and will suffer
18 concrete harm because of PSLF and TEPSLF’s inaccessibility.

19 134. In addition, California residents more broadly are injured. The ability to hire and
20 retain talented public servants is essential to California’s quasi-sovereign interests in protecting
21 its citizens’ health, welfare, and safety. California relies on public servants—such as nurses,
22 prosecutors, and teachers—to protect its interests. ED’s failure to implement PSLF and TEPSLF
23 as required impairs California’s ability to hire and retain these critical public servants.

24 135. Public servants with higher education, training, and qualifications are critical to the
25 future of California.

26 136. Supporting education, including for aspiring public servants, is one of the most

27 ¹¹⁸ U.S. Dep’t of Educ., *U.S. Secretary of Education Betsy DeVos Warns of Looming*
28 *Crisis in Higher Education* (Nov. 27, 2018), <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-warns-looming-crisis-higher-education>.

1 important functions performed by the State. In 2016-17, higher education was the third largest
 2 General Fund expenditure, accounting for 12% of General Fund resources; the majority of this
 3 funding—\$12.3 billion—is divided among the state’s three higher education systems.¹¹⁹

4 137. States have historically been the primary regulators of education. Over time, the
 5 federal government’s role in the regulation of higher education has increased. In particular, the
 6 HEA increased the role of the federal government in postsecondary education, primarily by
 7 creating the system of loans, subsidies, and grants that fund higher education to this day.

8 138. California is a member of the “triad” of actors—the federal government, state
 9 governments, and accreditors—that currently regulate postsecondary education. One of the
 10 State’s primary roles in the triad is consumer protection, including oversight of student loan debt.

11 139. The People have a strong interest in the regulation of student loan debt within its
 12 borders. This interest includes ensuring that each actor that impacts California student loan debt
 13 does so in accordance with law. Federal law, including PSLF and TEPSLF, has a significant
 14 impact on California residents’ welfare because of students’ widespread reliance on federal
 15 financial aid.

16 140. ED’s failure to timely provide borrowers with a simple TEPSLF application
 17 method and meaningful opportunity for relief has substantial direct and indirect effects that harm
 18 the well-being of California residents, California agencies, and other state interests.

19 **CLAIM 1**

20 **UNLAWFULLY WITHHELD AGENCY ACTION**

21 141. California incorporates by reference the foregoing paragraphs.

22 142. Under the APA, a reviewing court shall compel agency action “unlawfully
 23 withheld.”¹²⁰

24 143. Congress’s statutory mandate was clear: ED must create a “simple” process for
 25 public servants to apply for and access TEPSLF within “60 days” of enactment of TEPSLF.

26 _____
 27 ¹¹⁹ Kevin Cook, *Higher Education Funding in California*, Public Policy Institute of
 28 California (Mar. 2017),
https://www.ppic.org/content/pubs/jtf/JTF_HigherEducationFundingJTF.pdf.

¹²⁰ 5 U.S.C. § 706(1).

1 144. TEPSLF became law on March 23, 2018.

2 145. On May 23, 2018, ED announced an expanded opportunity for loan forgiveness
3 for public servants, which failed to meet clear statutory intent and requirements.

4 146. ED's failure to implement TEPSLF frustrates Congress's statutory mandate that
5 ED implement a simple method to apply for TEPSLF within sixty days.

6 147. Instead of creating a new simple application method for TEPSLF, ED continues
7 using a confusing and error-prone application process.

8 148. Because of ED's failure to comply with a congressional statutory mandate, the
9 denial rate for TEPSLF is about 94%. With relief unavailable to all but a small few, TEPSLF is
10 essentially a program on paper only.

11 149. Despite Congress's repeated efforts to obtain ED's compliance, ED still is not
12 administering TEPSLF as statutorily mandated.

13 150. Two years past ED's deadline, ED continues to unlawfully withhold the simple
14 application method and meaningful opportunity for relief that Congress mandated. ED should be
15 compelled under 5 U.S.C. § 706(1) to implement TEPSLF as Congress mandated.

16 **CLAIM 2**

17 **UNREASONABLY DELAYED AGENCY ACTION**

18 151. California incorporates by reference the foregoing paragraphs.

19 152. Under the APA, a reviewing court shall compel agency action "unreasonably
20 delayed."¹²¹

21 153. Congress mandated that ED create a simple process for public servants to apply for
22 and access TEPSLF within sixty days of enactment of TEPSLF.

23 154. That deadline passed on May 22, 2018.

24 155. Yet, despite the passage of two years since Congress's deadline, ED has yet to
25 create a simple method for borrowers to apply for and access TEPSLF.

26 156. Almost a year and a half after ED's deadline, the GAO found widespread borrower
27 confusion about TEPSLF and concluded that ED has "not created a borrower-friendly"

28 ¹²¹ *Id.*

1 application process.

2 157. Two years after ED’s statutory deadline to expand the availability of loan
3 forgiveness, ED’s TEPSLF denial rate is about 94%.

4 158. ED has provided no adequate justification for its delay. In fact, this is the second
5 chance Congress has given ED to implement a program to provide student loan debt relief to
6 public servants. Congress first mandated that ED develop such a program more than a decade
7 ago, when Congress enacted PSLF in 2007.

8 159. ED has acknowledged its legal responsibility to timely create a simple application
9 method for student loan debt relief for public servants under TEPSLF.¹²²

10 160. ED has unreasonably delayed agency action on administration of TEPSLF and
11 should be compelled under 5 U.S.C. § 706(1) to implement TEPSLF as Congress intended.

12 **CLAIM 3**

13 **AGENCY ACTION THAT IS ARBITRARY, CAPRICIOUS, 14 OR OTHERWISE NOT IN ACCORDANCE WITH LAW**

15 161. California incorporates by reference the foregoing paragraphs.

16 162. As noted, California believes and alleges that ED unlawfully withheld or
17 unreasonably delayed agency action under TEPSLF. In the alternative, to the extent ED claims
18 that it has timely implemented TEPSLF, its implementation is arbitrary and capricious or
19 otherwise unlawful under the APA.

20 163. Under the APA, a reviewing court shall “hold unlawful and set aside agency
21 action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or

22 _____
23 ¹²² See, e.g., Notice, Agency Information Collection Activities; Comment Request;
24 Temporary Expansion of Public Service Loan Forgiveness (TE-PSLF), 83 Fed. Reg. 24091 (May
25 24, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-05-24/pdf/2018-11109.pdf> (request by
26 ED for “emergency clearance” for its administration of TEPSLF because the “Consolidated
27 Appropriations Act, 2018, required ED to implement an application process within 60 days of
28 enactment” and emergency clearance is required for ED “to remain in compliance with the
statutory requirements”); U.S. Dep’t of Educ., Letter to Senator Tim Kaine (Oct. 10, 2018),
<https://www.kaine.senate.gov/imo/media/doc/ED's%20response%20to%20Sen.%20Kaine's%20letter%2010.11.18.pdf> (ED acknowledging its duty to “implement [TEPSLF’s] eligibility
requirements and to comply with the statutory requirement that this new opportunity be available
to borrowers within 60 days of enactment of the Act”).

1 otherwise not in accordance with law.”¹²³

2 164. ED’s implementation of TEPSLF is a “final agency action” under the APA.¹²⁴

3 165. Congress mandated that ED develop and administer a “simple” application process
4 and meaningful opportunity for student loan forgiveness for public servants within “60 days” of
5 the enactment of TEPSLF.

6 166. On May 23, 2018, ED announced the launch of a new loan forgiveness program
7 for public servants, describing the program as an “expanded” opportunity for relief.

8 167. However, instead of creating a simple application method as required by law, ED
9 created a complicated and confusing program that results in near-blanket denials.

10 168. This frustrates Congress’s mandate to simplify the loan forgiveness application
11 process for public servants and to expand access to critical debt relief. Congress mandated that
12 ED implement TEPSLF to significantly increase the number of public servants who qualify for
13 forgiveness as compared to PSLF. Yet ED designed a system that continues to systematically
14 deny applications. That system does not adhere to congressional intent and mandates to expand
15 the availability of loan forgiveness to public servants.

16 169. ED has administered and intends to continue administering the TEPSLF program
17 not in accordance with law.

18 170. ED’s convoluted TEPSLF application process contravenes the congressional
19 statutory mandate to implement a simple method for public servants to access student loan debt
20 forgiveness. It is therefore arbitrary, capricious, an abuse of discretion, or otherwise not in
21 accordance with law, and should be held unlawful under 5 U.S.C. § 706(2)(A).

22 **DEMAND FOR RELIEF**

23 California respectfully requests that this Court enter a judgment in its favor and grant the
24 following relief:

25 A. Declare that ED violated the APA because its failure to implement a simple
26 method to apply for TEPSLF by the statutory deadline constitutes unlawfully withheld agency

27 _____
28 ¹²³ 5 U.S.C. § 706(2)(A).

¹²⁴ *Id.* § 704.

1 action;

2 B. Declare that ED violated the APA because its failure to implement a simple
3 method to apply for TEPSLF by the statutory deadline constitutes unreasonably delayed agency
4 action;

5 C. Declare that ED violated the APA because its failure to implement a simple
6 method to apply for TEPSLF is arbitrary, capricious, or otherwise not in accordance with law;

7 D. Compel ED to expeditiously provide public servants with a simple process
8 to apply for TEPSLF and a meaningful opportunity to obtain relief consistent with congressional
9 statutory mandate;

10 E. Monitor ED's compliance; and

11 F. Grant other relief as the Court deems just and proper.

12

13

Dated: June 3, 2020

14

Respectfully submitted,

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Attorney General of California

16

/s/ Rose C. Goldberg

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*Attorneys for Plaintiff the People of the State
of California*

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