

Comments on Combined Application to Separate a Joint Consolidation Loan and Direct Consolidation Loan Promissory Note

The purpose of this document is to summarize comments and concerns regarding the Department of Education's (ED) and Federal Student Aid's (FSA) "Combined Application to Separate a Joint Application Loan and Direct Consolidation Loan Promissory Note" draft. These documented comments which were contributed by SpousalConsolidation.DoUsPart! members in a March 6, 2024 meeting, are uploaded for the Federal Registry comments on this application. Comments are organized by section.

Preamble Comments

No comments were made.

Section 1 & Section 2: Borrower and Co-Borrower Information

These sections are combined as they are intertwined.

- **The terms "borrower" and "co-borrower" need to be defined because they could be perceived differently based on who is reading the application.** JSCL's have a borrower and co-borrower. In many cases, the loan holder only has the borrower name for the loan and the Federal Student Aid site only lists the loans under the original borrower name with no reference to the co-borrower. For example, if a co-borrower inquires about the JSCL, they do not see any loans under their name, and servicers do not provide information to the co-borrower because their name is not associated with the loan.

FSA Response: The Department agrees that there may be some confusion for the borrowers applying for the separation and reconsolidation. The language will be modified to clarify the instructions for the borrowers.

- On this application, it's unclear whose name should go in Section 1 and whose name should go in Section 2. Should the original borrower always go in the borrower section, or should the name of the person completing this application, whether borrower or co-borrower, go in Section 1 of this application?

FSA Response: The Department agrees that there may be some confusion for the borrowers applying for the separation and reconsolidation. The language will be modified to clarify the instructions for the borrowers.

- Real-life example. A member of the group is divorced. Her ex-husband is the original borrower of this loan, and she is the co-borrower. Does her ex-husband's name go in Section 1? She is unable to gather the required information from him for that section. If she puts her name in Section 1, will she be denied because she is a co-borrower on the original loan?

FSA Response: This comment does not relate to the information collection.

- Is it common to ask for an employer's name on these applications? They don't ask for this

information under the Co-Borrower. While we assume each person holding the loan will complete the application and be the “borrower” on their individual application, we do not want to make assumptions because this historically leads to denial. We should not have to guess.

FSA Response: Other Direct Loan promissory notes also request employer information. The employer may be contacted to help locate the borrower if the Department is unable to reach the borrower using other contact information that the borrower has provided. The employer is not contacted as part of the consolidation loan approval process.

The application does not ask for the co-borrower’s employer information because if both co-borrowers wish to separate the joint debt into individual consolidation loans, each individual must submit a separate application and provide their own employer information.

No change.

- Should there be a different application for divorced applicants who will not have access to the “co-borrower” information? If co-borrower information is missing, will the application be denied? While Section 4 does provide an option for victims to file alone, the application seeks co-borrower information. Clarity is needed.

FSA Response: The Department requests the co-borrower information to help identify the joint consolidation loan being separated and to determine if the debt is being separated through the joint or separate application process. The co-borrower information is required.

No change.

Section 3: Reference Information

- No comment

Section 4: Joint or Separate Application to Separate a Joint Spousal Loan

- Number 18. This relates to the Section 1 & 2 comment. Borrower and co-borrower terms need to be clearly defined because they could be interpreted differently. The instructions for this application provide a warning that if the application is not completed correctly, it will be denied.

FSA Response: The Department agrees that there may be some confusion for the borrowers applying for the separation and reconsolidation. The language will be modified to clarify the instructions.

- Numbers 19 & 20 cause confusion for divorced couples. What happens if there is no emotional and/or physical abuse during the relationship, but one party is unwilling to cooperate after the divorce? What happens if one party refuses to pay their portion of the loan after the divorce and the person applying for the separation has continued to make the total payments? Because they cannot certify abuse, does that mean they are unable to separate their loans despite an uncooperative ex-spouse?

FSA Response: These questions do not relate to the information collection. For guidance related

to divorced couples and the joint versus separate application processes, borrowers should review the [StudentAid.gov](https://studentaid.gov) website.

- Numbers 19 & 20 have language about how loans will be separated between the two parties. Per the previous bullet point, it is unfair for one party paying for both parties to get no credit toward their portion of the loan, even though they've shouldered the burden of paying for both parties. If these loans cannot be justly and fairly separated based on the many nuances of these situations, the DoE should consider full discharge. When separation occurs, one party could owe 40%, and the other could owe 60%; however, the party that owes 40% could have been liable to make monthly payments for both parties following divorce because of an uncooperative ex-spouse. How will the DoE know who paid what when the NLDS doesn't track this loan type? Why should one person who has paid most of the loan get "reset" to pay their entire portion upon separation? Many group members owe as much or more than their original loan balance. It seems unfair to separate the loans using the prescribed formula for those who have spent years paying the whole balance for themselves and their former spouse.

FSA Response: The Joint Consolidation Loan Separation Act does not provide for a co-borrower of a joint consolidation loan to certify the amount they paid toward the combined debt compared to the other co-borrower.

No change.

- The inability to separate these loans individually in divorced situations is unacceptable.

FSA Response: This comment does not relate to the information collection.

Section 5: Repayment Plan Selection

- The form discusses two payment options, but it's unclear to the applicant that they must complete an IDR or SAVE application to choose that payment plan. It must be clearly stated and bold that applicants must complete that form if they do not want to be placed in a standard payment plan. The form may also provide a link to complete the additional form.

FSA Response: Section 5 of the application and promissory note details the repayment options available once the joint consolidation loan is separated and includes a link to the [StudentAid.gov](https://studentaid.gov) site where borrowers may request an income-driven repayment plan.

No change.

Section 6: Borrower Certifications, Authorizations, and Understandings

- 80% of JSCL holders are in FFELP loans. The impact of this on IDR payments or recounts is not clear for these borrowers. Will payments made while these loans were held in FFELP loan types count toward the payment recount? Will these loans be considered for the waivers available to other loan holders who could consolidate into Direct Loans? The JSCL holders did not and do not have that ability and should not be penalized for the department's inability to implement a law that allows consolidation in a Direct Loan.

FSA Response: This comment does not relate to the information collection.

- If the FFELP IBR/IDR recount will count toward the new Direct Loan, does that mean those repayment counts will also apply toward PSLF qualifying payments? This is unclear.

FSA Response: This comment does not relate to the information collection.

- Will loan counts made before the implementation of the PSLF count?

FSA Response: This comment does not relate to the information collection.

- Regarding IDR/IBR recount and PSLF, how does DoE plan to ensure the person who qualifies for PSLF gets the correct count applied to their account when the loans are separated?

FSA Response: This comment does not relate to the information collection.

- Some areas are unclear. Much of the text states, “under certain circumstances,” or “If you meet certain conditions;” however, there is no explicit language on what qualifies a person for these items. The ambiguity leaves too much for interpretation and does not allow borrowers to understand their rights fully.

FSA Response: The phrase “under certain circumstances” appears in one place in the application and promissory note, in a paragraph that discusses forbearances, and it is followed by two specific examples of conditions under which a forbearance may be granted without a request from the borrower. It would not be feasible to list all the many other circumstances under which a forbearance may be granted without a request.

The phrase “if you meet certain conditions” also appears just one time, in the section that discusses loan discharge and forgiveness, and this is followed by descriptions of the available types of loan discharge and forgiveness and the requirements to qualify. There are certain other places where similar language is used, such as in the explanations of Public Service Loan Forgiveness and Teacher Loan Forgiveness. It is not necessary to explain all eligibility requirements of these loan forgiveness programs in detail in the application and promissory note, and it would not be practical to do so. That information can easily be obtained from other sources, such as the Department’s StudentAid.gov website or the borrower’s loan servicer.

No change.

Section 7: Promises

- No comment.