



**SpousalConsolidation.DoUsPart!**

*We are a grassroots organization that centers the needs and voices of spousal/joint consolidation borrowers, and partners with allies, to impact statute and policy towards these unlawful loans.*

# Comments for Docket No. ED-2024-SCC-0005

## JCLSA Dra Joint Consolidation Loan Separation Application & ICR

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### Purpose of Document

This document summarizes comments that Joint Consolidation Loan borrowers contributed regarding the Department of Education's (ED) and Federal Student Aid's (FSA) Combined Application to Separate a Joint Consolidation Loan and Direct Consolidation Loan Promissory Note draft as a utensil for implementation of the Joint Consolidation Loan Separation Act (JCLSA), 455(g)(2)(A)(i) of the HEA. It is an official set of comments to be posted to the Federal Registry for this draft application.

These comments and concerns were gathered from organization members and documented through three sessions conducted by SpousalConsolidation.DoUsPart! (DoUsPart!). These comments address reviews conducted by JCL borrowers who are married, divorced, victims of abuse, and who may be interested in seeking access to federal benefits related to Public Service Loan Forgiveness (PSLF), Income-Driven Repayment Forgiveness (IDR), Borrower Defense, Permanent and Total Disability, etc.

This document does not preclude individual members from submitting comments to the Federal Register. DoUsPart! Members are advised to contribute their comments to the Federal Register within the Public Open Comment period.

Comments are organized by draft application sections. Only draft sections from the application or associated documents that received comments are included.

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# Comments for ED-2024-SCC-0005-0003\_attachment\_1.docx

## Comments for Application Title



Combined Application to Separate a Joint Consolidation Loan and Direct  
Consolidation Loan Promissory Note  
William D. Ford Federal Direct Loan Program

OMB No. 1845-NEW Form Under Review Exp. Date XX/XX/XXXX
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### The Meaning of “Combined”

The initial response is that the application's title is not accessible for individuals no longer in contact with their former spouse.

Does “Combined” refer to borrowers applying in combination or both applications for separation and Direct consolidation in combination? Given the circumstances for borrowers, the nature of JCLs and this form, this creates confusion for those filling out the application. This clarification of “combined” should be included in the “BEFORE YOU BEGIN” section.

This becomes evident in feedback from some borrowers who believe that the “REFERENCE INFORMATION” should be included in the application for Direct consolidation. Here, borrowers see “Combined” as both borrowers applying for separation, not as applying for **both** separation and Direct consolidation.

Setting this straight from the beginning will help address some of the issues itemized under each section, as the borrowers' interpretation of “combined” colors and how they interpret the remainder of the document significantly. This will become clear as the following items are discussed.

**FSA Response:** The word “Combined” in the title of the application simply indicates that the form serves as both an application to separate a joint consolidation and a promissory note for the new individual Direct Consolidation Loan (that is, the application and promissory note are combined into a single form). This word “combined” in the title is not intended to refer in any way to how the two co-borrowers of a joint consolidation loan apply to separate the loan. However, we will review the language used in other places throughout the form and make changes where appropriate for greater clarity.

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## Comments for Sections 1 & 2

### SECTION 1: BORROWER INFORMATION

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1. First Name \_\_\_\_\_

Middle Name \_\_\_\_\_

Last Name \_\_\_\_\_ Suffix \_\_\_\_\_

2. Former Name(s) \_\_\_\_\_

3. Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ 4. Date of Birth \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

5. Driver's License State and Number \_\_\_\_\_

6. Email Address \_\_\_\_\_ 7. Phone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

8. Alternate Phone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

9. Permanent Address  
\_\_\_\_\_

10. Mailing Address (if different from permanent address)  
\_\_\_\_\_

11. Employer's Name and Address  
\_\_\_\_\_

12. Work Phone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

### SECTION 2: JOINT CONSOLIDATION LOAN CO-BORROWER INFORMATION

Enter the requested information for the co-borrower of the joint consolidation loan that you want to separate.

13. First Name \_\_\_\_\_

Middle Name \_\_\_\_\_

Last Name \_\_\_\_\_ Suffix \_\_\_\_\_

14. Social Security Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

15. Date of Birth \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

### “Borrower” vs. “Co-borrower”

Generally, confusion on the terms “borrower” and “co-borrower” must be mitigated early via clear definitions because it will color how borrowers process every subsequent section, option, and requirement within the document.

Who qualifies as the borrower, who qualifies as the co-borrower, and how will those individuals be represented? This should be made clear. Depending on the proper requirements, this language should possibly be changed from “Borrower” and “Co-borrower” to “Applicant” and “Co-Applicant.” This intersects the original clarification needed for “combined” in the document's title.

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For close to two decades, borrowers, particularly the secondary borrower on the account, have had difficulties in accessing information from servicers on their own loan. In many cases, the loan holder only has the borrower's name for the loan and the FSA site only lists the loans under the original borrower's name with no reference to the co-borrower. For example, if a co-borrower inquires about the JCL, 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. This intersects concerns in Section 6, Item 23. D.

Based on the prior conditions, it's unclear whose name should go in Section 1 and whose name should go in Section 2. Should the original borrower on the loan 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?

Real-life example: A member of the group is divorced. Her ex-husband is the original/primary borrower of their JCL, and she is the secondary borrower or 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?

Some borrowers have experienced complications with populating last names into FSA's portal fields, leading to problems retrieving information from that system due to name matching, particularly in cases with hyphenated last names. This intersects the issue discussed above with secondary borrowers' access to loan information within FSA's and the servicers' systems. JCL borrowers are concerned with how this will affect application processing and the burden to borrowers if applications are denied. This is further complicated for some borrowers who are uncooperatively divorced and secondary co-borrowers on loan and cannot access loan information.

**FSA Response:** The Department agrees that there may be some confusion related to the use of the terms "borrower" and "co-borrower," particularly in light of the way joint consolidation loans have traditionally been reported by loan servicers. We will explore ways to revise the language used on the form for greater clarity in this area.

## Other issues

When a loan has been passed to multiple servicers, information is not always provided to the succession of servicers. How will FSA or servicers know who both co-borrowers are if this information has been lost in the transition between servicers?

**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 application, we do not want to make assumptions because this historically leads to denial. Borrowers should not have to guess. (This comment may stem from a lack of clarity that this document is both an application for separation and a master promissory note, bringing this back to the needed clarification of "combined." )

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**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.

The application does not directly address borrowers who are uncommunicative or uncooperative with their former spouse/co-borrower. How will they address divorced persons out of contact with each other?

**FSA Response:** Section 4, Item 20 outlines the application process for such borrowers.

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:** We do not see a need to have a separate application for divorced co-borrowers. The co-borrower information is needed to identify the joint consolidation loan that the applicant wishes to separate. The co-borrower section requests only the individual's name, date of birth, and Social Security Number (SSN). We believe that even in most divorce situations the two joint consolidation loan co-borrowers would know each other's name and date of birth, and in many cases would also have access to records showing the other individual's SSN. If a borrower does not have access to the co-borrower's SSN, the borrower can leave it blank. The consolidating servicer may contact the borrower for additional information to identify the joint consolidation loan in this scenario.

## Comments for Section 3

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**SECTION 3: REFERENCE INFORMATION**

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List two persons with different U.S. addresses who do not live with you and who have known you for at least three years. The first reference should be a close family member.

**16. Reference 1**

First Name \_\_\_\_\_  
Middle Name \_\_\_\_\_  
Last Name \_\_\_\_\_ Suffix \_\_\_\_\_  
Permanent Address \_\_\_\_\_

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Email Address \_\_\_\_\_ Phone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Relationship to You \_\_\_\_\_

**17. Reference 2**

First Name \_\_\_\_\_  
Middle Name \_\_\_\_\_  
Last Name \_\_\_\_\_ Suffix \_\_\_\_\_  
Permanent Address \_\_\_\_\_

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Email Address \_\_\_\_\_ Phone Number (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
Relationship to You \_\_\_\_\_

This section is unnecessary. Why are we providing references for loans that are already in process? ED-2024-SCC-0005-0003\_attachment\_2.docx claims that the purpose of collecting this information is not as loan references but rather contacts who would be able to help ED or FSA contact borrowers in the future if ED or FSA is unable to reach them. References are used only for this purpose and are never required to repay your loan.

Perhaps this section should be renamed "CONTACT INFORMATION."

**FSA Response:** It is established practice for all Direct Loan Program promissory notes to require two references. These individuals may be contacted to help locate the borrower if the Department is unable to reach the borrower using other contact information provided by the borrower. References are used only for this purpose. They are not held liable for repayment of the loan and are not contacted during the processing of an application to separate a joint consolidation loan.

No change.

Will both co-borrowers need separate references, or can they use the same references?

**FSA Response:** If both co-borrowers of a joint consolidation loan apply to separate the joint debt by checking Item 18 or 19 in Section 4, each individual will receive a new Direct Consolidation Loan for which that person is solely responsible for repaying in accordance with the terms and conditions of the combined application and promissory note. Therefore, each co-borrower must separately submit an application and promissory note. The references listed would be for that individual borrower applying. It is permissible for both individuals to list the same references.

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No change.

## Comments for Section 4

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### SECTION 4: JOINT OR SEPARATE APPLICATION TO SEPARATE A JOINT CONSOLIDATION LOAN

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Check the item (18, 19, or 20) that describes how you are applying to separate your joint consolidation loan. **CHECK ONLY ONE.**

18.  **Joint application for proportional separation of a joint consolidation loan.**

The individual identified in Section 2 and I are jointly submitting individual applications to separate any joint consolidation loan identified in ED's records as having been made to us as co-borrowers.

My new individual Direct Consolidation Loan will be for an amount equal to my portion of the joint consolidation loan. If I check Item 18, my portion will be determined by multiplying the current outstanding balance of the joint consolidation loan (see below) by the percentage of the original outstanding balance of the joint consolidation loan that was attributable to my individual loans that were repaid by the joint consolidation loan when the joint consolidation loan was made.

19.  **Joint application for separation of a joint consolidation loan based on a divorce decree, court order, or settlement agreement.**

The individual identified in Section 2 and I are jointly submitting individual applications to separate any joint consolidation loan identified in ED's records as having been made to us as co-borrowers.

My Direct Consolidation Loan will be for an amount equal to my portion of the joint consolidation loan. If I check Item 19, my portion will be equal to a percentage of the current outstanding balance of the joint consolidation loan (see below) that is specified in a divorce decree issued by a court, a court order signed by a judge, or a settlement agreement. **I must include a copy of the divorce decree, court order, or settlement agreement with this Note.**

20.  **Separate application for separation of a joint consolidation loan.**

I am separately applying to separate any joint consolidation loan identified in ED's records as having been made to me and the co-borrower identified in Section 2 into an individual Direct Consolidation Loan, regardless of whether or when the co-borrower identified in Section 2 also applies to separate the joint consolidation loan.

My Direct Consolidation Loan will be for an amount equal to my portion of the joint consolidation loan. If I check Item 20, my portion will be determined by multiplying the current outstanding balance of the joint consolidation loan (see below) by the percentage of the original outstanding balance of the joint consolidation loan that was attributable to my individual loans that were repaid by the joint consolidation loan when the joint consolidation loan was made. I understand that the co-borrower identified in Section 2 will be notified in writing that they are solely responsible for repayment of the remaining portion of the joint consolidation loan.

If I check Item 20, I certify that unless ED has otherwise determined that I may separately apply to separate the joint consolidation loan, I have experienced economic abuse or an act of domestic violence (as those terms are defined in section 40002 of the Violence Against Women Act of 1994 (34 U.S.C. 12291) from the co-borrower identified in Section 2, or I am unable to reach or access the loan information of the co-borrower identified in Section 2.

**Current outstanding balance of joint consolidation loan**

For purposes of Items 18, 19, and 20 the current outstanding balance of the joint consolidation loan that I am applying to separate is the total of the unpaid principal and accrued interest on the loan, plus any outstanding charges and fees, as of the day before my new Direct Consolidation Loan is made.

### General comments

Section 4 may be more effective with different items and headings that more clearly differentiate differences between married and divorced applicants. ED is defining three broad buckets for processing purposes, but borrowers see it from their sets of conditions. It would be helpful if ED provided some example scenarios within the application sections or within the instructions for completing the application/promissory note. If there are areas where ED expects discretion for case-by-case

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assessment, that should be communicated overtly, and contact information should be given.

**FSA Response:** The three categories outlined in Section 4 reflect the three options for applying to separate a joint consolidation loan that are provided for in the Joint Consolidation Loan Separation Act. The application and promissory note itself would not be an appropriate place to include sample scenarios. However, we will consider ways in which the instructions might be expanded to more clearly explain how the process will work in various circumstances.

Borrowers have concerns about co-borrowers being able to get information on loans, especially in cases of domestic violence. Both parties should be able to make inquiries without the primary borrower, but that has historically been a challenge for secondary borrowers, or co-borrowers of the JCL. Could there be an option for only contacting by mail? Some people don't want texts and don't have cell phones, don't want to list cell phones.

**FSA Response:** If both co-borrowers of a joint consolidation loan wish to separate the joint debt into individual Direct Consolidation Loan, each individual must submit a separate Combined Application to Separate a Joint Consolidation Loan and Direct Consolidation Loan Promissory Note, and the contact information provided by each individual on their separate applications will not be shared with the other individual. Once the joint consolidation loan has been separated and the new individual consolidation loans have been made, each new consolidation loan will be solely the responsibility of one individual, and the other co-borrower of the prior joint consolidation loan will have no access to any information about the new loan.

The form does not specifically require the applicant to provide a cell phone number. It asks for the phone number at which the applicant can most easily be reached. Further, the instructions state that if the applicant does not have a phone, they may enter "N/A."

No change.

Some divorced borrowers believe that there should be a streamlined separation process for divorced spouses. They are concerned that Section 4 options 18, 19, and 20 are not robust enough to capture JCL nuances. This section should outline different sections for different situations. Further, the clarification

Is this form for both co-borrowers or must each spouse complete separate forms?

Per ED-2024-SCC-0005-0003\_attachment\_2.docx, If you are applying jointly with the co-borrower of your joint consolidation loan by checking Item 18 or 19 in Section 4, then processing will only proceed with the co-borrower identified in Section 2 has also submitted a Note. References are not consistent or clearly outlined in the guidance. Parenthetically, the reference to "note," in ED-2024-SCC-0005-0003\_attachment\_2, seems to point to this combined separation and consolidation application. Reference to "note" rather than "application" adds confusion. Some of these issues and misunderstandings result from incongruent terms in the instructions and further illustrate that "combined" is not understood from the beginning.

**FSA Response:** If each co-borrower of a joint consolidation loan wishes to separate the joint debt (Item

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18 or 19 in Section 4), each individual must complete and submit a separate Combined Application to Separate a Joint Consolidation Loan and Direct Consolidation Loan Promissory Note. We will consider options for revising and expanding the instructions to more clearly explain how the process will work.

Could ED or FSA develop a system where one borrower can fill out the application and submit it, and FSA assigns a case number reference tied to this specific application so that the co-borrower can be prompted to complete their part? This would facilitate situations of divorce where former spouses live separate lives in separate parts of the country. In some cases, former spouses may work together to sever their last bond but may not necessarily want a lot of contact with each other.

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

Some borrowers believe it would be better to conduct this process digitally, akin to IDR recertification.

**FSA Response:** For the initial implementation of the Joint Consolidation Loan Separation Act, the Department is limited to providing only a paper application process.

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:** This comment does not relate to the information collection. However, we note that it is not necessary for a joint consolidation loan co-borrower to certify abuse as a condition for submitting an application to separate the joint debt without the submission of an application by the other co-borrower. The applying co-borrower may also certify that they are unable to reach or access the loan information of the non-applying co-borrower.

## **Loan apportionment is a pervasive concern under all of section 4.**

Item 18. Joint application for proportional separation of a joint consolidation loan.

Married borrowers raised the following concern regarding option 18.

Regarding how loans are apportioned, JCL borrowers' have legitimate circumstances that work outside the limited considerations here.

- An amicably married couple files to separate and consolidate using this form. Spouse A took out only unsubsidized loans. Spouse B took out both subsidized and unsubsidized loans. In their joint payment strategy, they chose to work towards paying off the amounts of Spouse A's unsubsidized loans first. A balance remains, but it would be attributed to Spouse B's loans.

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Under this separation policy, Spouse A is now given a new loan balance derived from their representative portion of the outstanding balance, which is all Spouse B's loans.

**FSA Response:** The proportional separation of the joint debt as described in Section 4, Item 18 reflects the statutory provisions of the Joint Consolidation Loan Separation Act.

No change.

Divorced borrowers raised the following concern regarding option 18.

- They are unsure if both borrowers are required to apply for separation simultaneously. This may stem from borrowers' interpretations of "combined" and the itemized conditions that must be met for processing, which are not clarified until near the end of the instruction

**FSA Response:** Item 23.B. in Section 6 of the form clearly explains that if the applicant has checked Item 18 or Item 19 in Section 4, the co-borrower identified in Section 2 must also submit an application and must check the same option in Section 4.

Item 19. Joint application for separation of a joint consolidation loan based on a divorce decree, court order, or settlement agreement.

Divorced borrowers raised the following concerns regarding option 19. The following points must be made for the listed utensils.

- Court-ordered documents from 20 years ago do not accurately reflect current conditions.
  - Divorce and resultant resolutions were ill-guided from 2006 forward as joint consolidation loans ceased to exist statutorily and programmatically. There was no law governing how these separations should take place. Lawyers didn't even know what to do with these loans, and many factors were not considered at the time of divorce.
  - One spouse became a sole earner while the other spouse re-married and had the income to pay the loan, so the other spouse would not qualify for IBR or other programs that would have been available to them otherwise.
  - Some spouses entitled to child support used those proceeds to pay for student loans instead of caring for their children.
  - Some spouses never received child support but still made regular loan payments, which was an unnecessary burden on the responsible person who made the payments.
  - Those who would have qualified for IBR or other programs outlined by the Department of Education, but could not because of the joint nature of the Joint Consolidated Loan.

**FSA Response:** These comments do not relate to the information collection.

Item 20. Separate application for separation of a joint consolidation loan.

Divorced borrowers raised the following concerns regarding option 20.

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- The apportioning of the Direct Consolidation Loan does not provision individuals who shouldered the loan payments while the former spouse or abuser has not been obligated to pay. This language is not acceptable to victims of economic abuse who have maintained these debts alone. The applicants' new Direct consolidation loan balance for an amount equal to their portion of the joint consolidation loan critically misses as economic abuse manifested into the victim making sole payments on the JCL. One DoUsPart! member reported having made 100% of the JCL payments, as a victim of economic abuse. To apportion the new Direct loan as a proportion of the original borrowed amount adds undue burden to these borrowers.
    - An abuse victim has sustained economic abuse through their JCL, where the abusive and uncooperative ex-spouse has perpetrated economic abuse well past marriage by paying nothing towards the loan and sometimes not co-applying for Income-Driven Repayment (IDR), leaving the victim to make sole payments for 15 - 20 years. In this case, no legal document governing the apportioning of the loan, like a divorce decree, exists. After separation, the victim, having paid for the last 15 - 20 years, is now given a new balance that represents a proportion of the remaining balance, and no credit is given to the victim towards their sole payments towards their loan proper. This provision favors the abuser, working contrary to the spirit of the law.
  - ED should consider parsing the remaining debt proportion based on the payment history of the spouse who has made the payments. In this, there needs to be a place where borrowers can certify the number of payments they made and get credit. Some borrowers have commented that an additional option should be a "Separate application for proportional separation of a joint consolidation loan based on the payment history of the applicant for equitable distribution of the remaining debt."

**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.

- Abuse victims are unclear if self-certification is sufficient, or if there are other requirements to certify that they are victims of economic abuse. It is not clear.
  - There may be other repercussions of certifying abuse – children upset that one parent is claiming abuse to separate a loan
  - Does intent need to be defined for this classification, or do we self-certify?

**FSA Response:** The language in Section 4, Item 20 clearly states that by checking this item, the applicant certifies that they meet the requirements to apply separately regardless of whether or when the other co-borrower submits an application to separate the joint debt. Nothing in this language requires the applicant to provide any supporting documentation. With regard to the concern about the repercussions of certifying abuse, the information provided by the applicant in this form is not released to children or other family members.

No change.

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

**FSA Response:** Nothing prohibits the separation of joint consolidation loans in divorce situations. Divorced joint consolidation loan co-borrowers may apply jointly under Item 18 or Item 19 in Section 4 (each individual must submit a separate application and check the same option), or just one of the divorced spouses may apply under Item 20, if they certify that they meet the requirements for separate application.

- In the third paragraph under option 20, ED has indicated that it will exercise discretion in determining circumstances that may warrant a borrower to separately apply to separate the joint consolidation loan. The wording of this statement leaves that latitude severely understated. Most borrowers who read it, do not even pick up on it. Consequently, borrowers interpret this option as not robust enough to handle the innumerable nuances experienced by both victims of abuse and victims of negligent and uncooperative former spouses. This leads to the following comments and concerns.
  - Some divorced borrowers believe that there should be another alternative option to option 20, a “ Separate application for separation of a joint consolidation loan with a divorce decree, etc.” Some divorced applicants may need to file separately and have a divorce decree to support a division differently than option 20 allows. These borrowers feel they can provide supporting documentation with court orders and rulings against a former spouse.

**FSA Response:** The Joint Consolidation Loan Separation Act does not provide for the option outlined in this comment.

No change.

- An additional section needs to be added for JCL borrowers who are separated to apply for separation with credit for the payments they have made.

**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.

- Many borrowers want more information in this section, and the wording needs to be clear on what is required for this section. Some people may be victims of neglect or circumstance.
- if someone was taken advantage of because of their JCL situation, language must reflect those situations here to cover multiple scenarios. It needs to be flexible enough to accommodate large numbers of people.

**FSA Response:** The Joint Consolidation Loan Separation Act has strictly outlined the requirements for borrowers to apply through the separate application process. The form reflects the statutory requirements and cannot be modified to cover other circumstances not provided for in the law.

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No change.

- The language here needs to be shored up. If ED does not want to place parameters around qualifications it deems worthy of a separate application, then ED should more overtly recommend that borrowers reach out to see if their circumstances warrant option 20.

**FSA Response:** The language in Item 20 reflects the statutory provisions of the Joint Consolidation Loan Separation Act, which does not describe specific circumstances in which the Department may authorize a separate application by just one co-borrower other than in circumstances involving abuse or where the applying co-borrower is unable to reach or access the loan information of the other individual. It is not possible to specify all such possible conditions, as these would depend on individual borrower circumstances. A joint consolidation loan co-borrower who believes that other special circumstances warrant allowing a separate application should contact the Department.

No change.

- The JCLSA rightfully brings the HEA in alignment with the Reauthorization of the Violence Against Women Act of 2022. This focuses a predisposition on economic abuse towards women, but there may be men in this situation as well.
- Some borrowers are legitimately concerned about what happens in the case of retribution, if or when one spouse does not agree.

**FSA Response:** These comments are not related to the information collection.

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- The last line does not indicate who is responsible for the debt and accrued interest if only one person applies.

**FSA Response:** The last sentence in the second paragraph of Item 20 in Section 4 states that the non-applying co-borrower will be notified in writing that they are solely responsible for repayment of the remaining portion of the joint consolidation loan.

No change.

**If these loans cannot be justly and timely separated based on the many nuances of these situations, ED should consider full discharge.**

**FSA Response:** This comment is not based on the information collection.

## Comments for Section 5

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### SECTION 5: REPAYMENT PLAN SELECTION

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To understand your repayment plan options, carefully read the repayment plan information in Section 8, Item 10 of this Note and in any other materials you receive with this Note. Then select a repayment plan for your Direct Consolidation Loan.

- To select the Standard Repayment Plan, the Graduated Repayment Plan, or the Extended Repayment Plan, complete the Repayment Plan Selection form that accompanies this Note.
- To select an income-driven repayment (IDR) plan, visit [StudentAid.gov](http://StudentAid.gov) ([studentaid.gov/idr/](http://studentaid.gov/idr/)) to complete the Income-Driven Repayment Plan Request online, or complete the Income-Driven Repayment Plan Request form that accompanies this Note. The IDR plans are the Saving on a Valuable Education Plan (SAVE Plan), the Income-Based Repayment Plan (IBR Plan), and the Income-Contingent Repayment Plan (ICR Plan). Not all borrowers are eligible for all of the IDR plans.

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:** The language in Section 5 clearly states that to apply for an income-driven repayment (IDR) plan the applicant must go to StudentAid.gov to complete the IDR application online or may alternatively complete and submit the IDR request form that will accompany the application and promissory note.

No change.

## Comments for Section 6

### General Comments

Some borrowers have other loans not part of the JCL, but nothing here addresses this condition. Some borrowers have Parent Plus loans that are entering repayment. How will these situations be treated?

**FSA Response:** The option of adding other loans to the new individual consolidation loan is clearly explained in Section 8, Item 5. With regard to parent PLUS loans entering repayment, these loans could also be added to the new individual consolidation loan as described in Section 8, Item 5. However, as

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explained in Section 8, Item 10, adding a parent PLUS loan to the consolidation loan would limit access to IDR plans.

No change.

### **What happens when a former spouse submits one of these applications fraudulently?**

**FSA Response:** This is not related to the information collection.

#### Item 23. A.

23. I understand the following:

- A. If ED accepts this Note, ED will send funds to the holder of the joint consolidation loan that I want to separate to pay off the loan, as described below. The amount of my Direct Consolidation Loan will be as follows:
  - If I checked Item 18 or Item 20 in Section 4, the amount of my new individual Direct Consolidation Loan will be equal to the current outstanding balance of the joint consolidation loan (see below), multiplied by the percentage of the original outstanding balance of the joint consolidation loan that was attributable to my individual loans that were repaid by the joint consolidation loan when the joint consolidation loan was made.

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- If I checked Item 19 in Section 4, the amount of my Direct Consolidation Loan will be equal to a percentage of the current outstanding balance of the joint consolidation loan (see below) that is specified in the divorce decree, court order, or settlement agreement that I have included with this completed Note.

The current outstanding balance on the joint consolidation loan that I am applying to separate is the total of the unpaid principal, unpaid accrued interest, and any outstanding charges and fees (as defined by federal regulations and as certified by the loan holder) as of the day before my new Direct Consolidation Loan is made. If I am applying to separate a defaulted joint consolidation loan, collection costs may also be included as part of the current outstanding balance. ED does not charge collection costs on defaulted Direct Loans or defaulted Federal Family Education Loan (FFEL) Program loans that are held by ED. For a defaulted FFEL Program loan that is held by a guaranty agency, the amount of any collection costs that may be included in the payoff balance of the loan is limited to a maximum of 18.5% of the outstanding principal and interest.

Regarding apportionment, this loan contract does not allow for a fair distribution of the remaining debt for applicants who became the sole payer of the debt after divorce. Essentially paying back their portion and their former spouse's portion from 2006, when the program was abandoned, to now.

**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.

Item 23. C.

- C. If I checked Item 20 in Section 4, the co-borrower identified in Section 2 will be solely responsible for the remaining balance of the joint consolidation loan after my portion of the loan is separated into a new Direct Consolidation Loan.

Again, no provisions for economically abused spouses who were left with the financial burden of the debt these loans created. Many have paid more than the original amount they borrowed, yet they do not get credit for these payments in full at separation.

**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.

Item 23. D.

- D. Before the joint consolidation loan is separated and my new Direct Consolidation Loan is made, ED will send me a notice that: **(1)** identifies the joint consolidation loan that will be separated and shows the amount of that loan that will be included in my new Direct Consolidation Loan, as verified with the holder of the joint consolidation loan or through the National Student Loan Data System (NSLDS), and **(2)** tells me the deadline by which I must notify ED if I want to cancel my application to separate the joint consolidation loan into an individual Direct Consolidation Loan.

Understanding that the NSLDS is the utensil that ED uses for tracking student loans and managing its consolidation process, what quality assurance does it have in place to assure that FSA and servicers can adequately report on loans, particularly FFELP loans not held by the federal government? JCL borrowers

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have suffered the same servicing problems as the broad borrower base; however, JCL borrowers have been serviced in a procedural, regulatory, and statutory vacuum since program abandonment in 2006.

In a FOIA request dated May 2021 from ED to the Student Borrower Protection Center (SBPC), ED's responses shed light on the integrity of the data stored in the NSLDS for joint consolidations, which consequently has led to gross servicing issues and misinformation extended to JCL borrowers. "In practice, it is difficult to enforce policy because Joint consolidation loans are not identified as such in the NSLDS." Of the seven specific statistics pertaining to JCL loans requested, FSA provided only 3 due to poor documentation and tracking of JCLs within the NSLDS. Further, a joint consolidation loan in NSLDS is reported under the name of just one of the co-borrowers. This would explain, in part, why the co-borrower, who is not the primary on the account, cannot access information regarding their loan. It also explains why these same co-writers have \$0 balances in the FSA system.<sup>1</sup> This deficiency intersects the comments provided later under Comments for ED-2024-SCC-0005-0002\_attachment\_1.docx related to using the Loan Verification Certificate (LVC). This impacts how various borrowers may respond with concern and comment on the preceding sections. Consider these quotes from JCL borrowers.

- "I have had limited access with the loan servicer due to security barriers put in place by my ex-spouse."
- "Over the years, my ex has had sole control over the loan, and I have been unable to access any guidance or options, including what repayment plan we are on..."

**If these loans cannot be justly and timely separated based on the many nuances of these situations, ED should consider full discharge.**

**FSA Response:** These comments are not related to the information collection.

Item 23. E.

- E. If the amount ED sends to the holder of the joint consolidation loan is more than the amount needed to pay off the loan (as described above in Item 23.A.), the holder will refund the excess amount to ED and this amount will be applied against the outstanding balance of my new Direct Consolidation Loan. If the amount ED sends to the joint consolidation loan holder is less than the amount needed to pay off my portion of the loan, ED will include the remaining amount in my new Direct Consolidation Loan.

Regarding the statement, "If the amount ED sends to the joint consolidation loan holder is less than the amount needed to pay off my portion of the loan, ED will include the remaining amount in my new Direct Consolidation Loan." In what instance would ED not send enough money to pay off a JCL borrower's loan portion?

**FSA Response:** This language is also included on the regular Direct Consolidation Loan Application and Promissory Note. It is necessary because in some instances, due to the timing of the payoff or other reasons, the payoff amount may be less than the amount needed to pay off the loan that is being consolidated.

No change.

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<sup>1</sup> Taken from [SpousalConsolidation.DoUsPart! Impact Report 2022-2023](#), Revision 1.1-20230430

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Item 23. G.

- G. If I am applying to separate a joint Federal Consolidation Loan into a new Direct Consolidation Loan and I choose to repay my Direct Consolidation Loan under an IDR plan, any payments made on the joint Federal Consolidation Loan under the IBR Plan or the Standard Repayment Plan with a 10-year repayment period, or any months of economic hardship deferment on the Federal Consolidation Loan, will count as qualifying payments toward IDR loan forgiveness on my new consolidation loan.

What about people who would have qualified for IDR but could not reasonably contact their former spouse to take advantage of these programs? Many became the sole payer of the debt, and others defaulted.

Items G, H, and I under Section 6, Item 23 raise many questions about treating JCLs under existing Executive-driven reforms introduced during the Pandemic Payment Pause.

Once the JCLSA was passed into law in October 2022, ED provisioned accommodations for JCL borrowers to access some of these reforms like the PSLF Waiver, IDR Adjustment, and PSLF adjustment. These accommodations acknowledged that the JCLSA was set forth, that the right was granted to JCL borrowers on October 11, 2022, to request separation from these loans, and that rightful access was integral for FFELP borrowers' access to federal benefits, if the borrower so chose.

For FFELP borrowers, this document does not address these provisions. The language, particularly item I, indicates that qualifying payment counts start over for FFELP borrowers start over for FFELP borrowers, but not for Federal Direct borrowers.

80% of JCL holders are in FFELP loans. The impact of this on IDR payments or recounts is not clear for these borrowers. Will payments be made while these loans are 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? JCL 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.

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

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

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:** These comments do not relate to the information collection. However, we note that the language on the form reflects the terms and conditions of the Joint Consolidation Loan Separation Act and the Direct Loan Program regulatory provisions that govern the treatment of payments made on loans before they were consolidated for purposes of IDR plan loan forgiveness or PSLF. The language on

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the form purposely does not cover the one-time IDR account adjustment, because this is only a temporary provision.

Some areas are unclear. There's a lot of text that states, "under certain circumstances," or "If you meet certain conditions;" however, there is no clear language on what qualifies a person for these items. The ambiguity leaves too much for interpretation and does not allow borrowers to fully understand their rights.

**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.

## Comments for ED-2024-SCC-0005-0002\_attachment\_1.docx

The following sections comment on the information provided in the Supporting Statement for Paperwork Reduction Act Submission.

### Comments for Item 2: Use of Information

Understanding that the LVC is the utensil that ED uses for managing its consolidation process, what quality assurance does it have in place to assure that servicers and holders can adequately report on loans, particularly FFELP loans not held by the federal government? JCL borrowers have suffered the same servicing problems as the broad borrower base; however, JCL borrowers have been serviced in a procedural, regulatory, and statutory vacuum since program abandonment in 2006. Until 2019, the LVC had no formal data capture for joint consolidations.<sup>2</sup> Since 80% of JCLs fall under FFELP and historically could not be consolidated to Direct, this utensil and practice have no track record of effective use or quality assurance.

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<sup>2</sup> Taken from [SpousalConsolidation.DoUsPart! Impact Report 2022-2023](#), Revision 1.1-20230430

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If servicers cannot accurately track payments or provide master promissory notes, if servicers can go years without knowing that a given borrower's loan is a JCL, if loans have lost historical documentation after being auctioned or purchased and passed from one loan holder to another, how can we be certain that the LVC is accurate?

How will ED offset the burden to borrowers if they find inconsistencies in the information returned. Further, how does ED intend to ensure that borrowers are armed with the appropriate knowledge to properly check the information returned from the LVC as informed borrowers?

This intersects previous concerns itemized for ED-2024-SCC-0005-0003\_attachment\_1.docx, Section 6, Item 23. D.

**If these loans cannot be justly and timely separated based on the many nuances of these situations, ED should consider full discharge.**

**FSA Response:** The proposed LVC for use with the Combined Application to Separate a Joint Direct Consolidation Loan and Direct Consolidation Loan Promissory Note is modeled on the existing LVC that has been used for regular Direct Consolidation Loans for many years without any significant issues related to inaccurately reported information. As is explained in Section 6, Item 23.D., a joint consolidation loan borrower who applies to separate a joint debt into a new individual Direct Consolidation Loan will receive a notice showing the amount of the joint consolidation loan that will be included in the new consolidation loan, as verified with the holder of the joint consolidation loan, and informing the borrower of the deadline by which they must notify the Department if they wish to cancel their application. Any borrower who believes that the loan amount information in this notice is incorrect may contact the Department to resolve the issue before the new consolidation loan is made.

No change.

Inquiries can be directed to [spousalconsolidation.doupart@gmail.com](mailto:spousalconsolidation.doupart@gmail.com)