DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Attention: Ms. Cary D. Pugh

Dear Ms. Pugh:

This letter responds to your request for a general information letter concerning a student loan forgiveness program enacted as section 401 of the College Cost Reduction and Access Act of 2007 (Public Law 110-84) and codified at § 455(m) of the Higher Education Act of 1965 (Public Law 89-329)(HEA). Specifically, you asked that the Internal Revenue Service address the tax consequences to the borrower under § 108(f) of the Internal Revenue Code, as well as the lender's reporting requirements under § 6050P that may apply under the loan forgiveness program.

HEA Student Loan Programs

The HEA authorizes two loan programs, the Direct Loan program and the Federal Family Education Loan (FFEL) program. Under the Direct Loan program, the Department of Education makes subsidized and unsubsidized loans directly to students (Federal Direct Stafford/Ford Loans) and parents (Federal Direct PLUS Loans). The Direct program also includes a Federal Direct Consolidation Loan Program. Under the FFEL program, the lenders are non-federal entities, such as banks and loan associations, credit unions, schools, and state and private nonprofit agencies.

Section 455(m) of the HEA provides for the forgiveness of eligible Direct Loans by the Department of Education in the case of a borrower who has made 120 monthly payments and has been in public service during that 120-month period. The statute provides that after the conclusion of the employment period, the Secretary of Education will cancel the obligation to repay the balance of principal and interest due as of the time of the cancellation. This loan forgiveness program will also apply to FFEL loans from private lenders that are consolidated into Direct Consolidation Loans.

Tax Consequences of Student Loan Discharges under § 455(m) of the HEA

Section 61(a) of the Code provides that, except as otherwise provided in subtitle A, gross income means all income from whatever source derived. Section 61(a)(12) provides that gross income includes income from discharge of indebtedness.

Section 108(f)(1) of the Code provides that gross income does not include any amount that would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if the discharge was pursuant to a provision of a loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

Section 108(f)(2) of the Code defines "student loan" as any loan to an individual to assist the individual in attending an educational organization described in § 170(b)(1)(A)(ii) made by (A) the United States, or an instrumentality or agency thereof, (B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or (C) a public benefit corporation which is exempt from taxation under § 501(c)(3), which has assumed control over a State, county, or municipal hospital, and whose employees have been deemed to be public employees under State law, or (D) any educational organization described in §170(b)(1)(A)(ii) if such loan is made pursuant to an agreement with any entity described in subparagraphs (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in § 501(c)(3) and exempt from tax under § 501(a).

The flush language to § 108(f) provides that the term "student loan" includes any loan made by an educational organization described in § 170(b)(1)(A)(ii) or by an organization exempt from tax under § 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in § 108(f)(2)(D)(ii).

In the case of loan forgiveness provisions of § 455(m) of the HEA for Direct Loans based on public service, the Department of Education is the lender, and the loans qualify as student loans for purposes of §108(f)(2). Additionally, loan forgiveness for public service is conditioned on the borrower working for a certain period of time in qualifying public service positions. Therefore, public-service-loan forgiveness under the Direct Loan program satisfies the requirements of § 108(f)(1) of the Code, and a Direct

Loan borrower may exclude loan forgiveness amounts based on public service from gross income under § 108(f)(1).

Effective July 1, 2008, a FFEL borrower may consolidate a FFEL loan into a Direct Consolidation Loan. Therefore, even though FFEL loans do not have a provision for discharge conditioned on public service, a FFEL borrower may exclude loan forgiveness amounts from gross income under Code § 108(f) by consolidating a FFEL loan into a Direct Consolidation Loan and meeting the requirements of the public service provisions.

Information Reporting under § 6050P of the Code

Section 6050P of the Code provides that an applicable entity must file an information return if it discharges an indebtedness of any person (in whole or in part) that is greater than $600. Section 1.6050P-1(a)(3) of the Income Tax Regulations (regulations) provides that the discharged indebtedness must be reported regardless of whether the debtor is subject to tax on the discharged debt under §§ 61 and 108. The Department of Education, as a Federal executive agency lender, is an applicable entity subject to reporting requirements. *See* § 6050P(c).

Section 1.6050P-1(a)(1) of the regulations provides that for purposes of this reporting requirement, a discharge of indebtedness is deemed to have occurred if and only if one of eight identifiable events takes place. Section 1.6050P-1(b)(2) lists the eight identifiable events as:

> (1) a discharge of indebtedness in bankruptcy;
> (2) a cancellation or extinguishment of indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar federal or state court proceeding;
> (3) a cancellation or extinguishment of indebtedness upon the expiration of a statute of limitation for collection or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;
> (4) a cancellation or extinguishment of indebtedness pursuant to a foreclosure election that bars the applicable entity's right to pursue collection;
> (5) a cancellation or extinguishment of indebtedness in a probate or similar proceeding that renders a debt unenforceable;
> (6) a discharge of indebtedness pursuant to an agreement between the debtor and applicable entity that discharges the debt for less than full consideration;
> (7) a discharge of indebtedness pursuant to the applicable entity's defined policy to discontinue collection and discharge the debt; or
> (8) the expiration of the non-payment testing period described in § 1.6694-1(b)(2)(iv) of the regulations.

The information return must be filed regardless of whether the actual discharge of indebtedness occurs on or before the date of the identifiable event. If a discharge of indebtedness does not fall within one of the eight identifiable events, the applicable entity is not required to report the discharge. However, if the actual discharge occurs before the identifiable event, the creditor may report the discharge before the identifiable event. *See* § 1.6050P-1(b)(3) of the regulations.

This letter calls your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. *See* Rev. Proc. 2009-1, 2009-1 I.R.B. 7, § 2.04.

If you have any additional questions, please contact Craig Wojay of the Office of Associate Chief Counsel (Income Tax & Accounting) on (202) 622-4920 or Emily Lesniak of the Office of Associate Chief Counsel (Procedure & Administration) on (202) 622-4940.

Sincerely,

Donna Welsh

Donna J. Welsh
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)