

June 14, 2011

Mr. James Hyler, Acting Director
Information Collection Clearance Division
U.S. Department of Education
400 Maryland Avenue SW, LBJ
Washington, D.C. 20202-4537

Via email to: icdocketmgr@ed.gov

Subject: Comments in response to Employment Certification for Public Service Loan Forgiveness, 76 FR 04563, OBM Control Number 1845-NEW

Dear Mr. Hyler:

Thank you for providing this opportunity to comment on the Proposed Employment Certification Form for Public Service Loan Forgiveness. I appreciate that the Department of Education requested and considered the input of affected individuals and organizations early in the development process. To further improve borrower and employer understanding and to reduce administrative burden, I provide the following additional comments. I also support the comments submitted by The Institute for College Access and Success (TICAS), the National Consumer Law Center (NCLC), the American Bar Association (ABA), the National Legal Aid and Defender Association (NLADA) and Equal Justice Works.

Comments Regarding the Proposed Instructions

1. Clarify that the certification form should be sent to the borrower's Direct Loan Servicer, not the Department of Education

The instructions tend to indicate that borrowers may send completed forms to either their Direct Loan Servicer or the Department of Education. If the Department intends borrowers to submit forms to their Direct Loan Servicer rather than to the Department of Education, that should be clearly stated.

2. Clarify that the Department will notify borrowers in writing if a submitted form is incomplete and what information is missing

Section 3: Borrowers should be notified in writing if a submitted form is incomplete, what information is missing, and given an opportunity to fix errors.

3. Clarify that if a form is denied, the Department will inform borrowers of a specific reason for denial

Borrowers should be informed whether their submission has been approved or denied. If denied, borrowers should be notified of a specific reason, and there should be a clear appeals process in place for borrowers who believe a denial is in error.

4. Correct the definition of “public service organization”

Section 4, Item 3. Item 3 of the Instructions for the Authorized Official misstates the statutory and regulatory language and requires modification. It presently states:

*Item 3: Check the box next to the category which best describes your public service organization. If the employing organization is a private organization that provides public service(s) (category (e)), check the box(es) that describes the type(s) of public service(s) your organization provides. **An organization does not qualify** as a public service organization if it does not provide one of the listed public services, or if it is a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.*

(emphasis added).

Government and 501(c)(3) employers need not certify whether they provide one of the listed services, only private organizations must do so in order to be qualifying public service organizations. Adding the word “private” will bring the form in line with the law and will serve to prevent borrower and employer confusion and administrative burden.

The below edited version more precisely tracks the statutory and regulatory definition of qualifying employment:

*Item 3: Check the box next to the category which best describes your public service organization. If the employing organization is a private organization that provides public service(s) (category (e)), check the box(es) that describes the type(s) of public service(s) your organization provides. **A private organization does not qualify** as a public service organization if it does not provide one of the listed public services, or if it is a business organized for profit, a labor union, a partisan political organization, or an organization engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.*

(emphasis added).

Comments Regarding the Proposed Employment Certification Form

5. Allow borrowers to indicate a Former Name , if any

Section 2: Please consider adding a Former Name field to the borrower information box (note that the Civil Legal Assistance Attorney Repayment Program encountered processing difficulties for borrower applications of married borrowers whose names had changed since borrowing).

6. Allow Authorized Officials to indicate that a borrower is a part-time employee

Section 4, Item 2(b): Some borrowers will meet the full-time requirement by working in more than one part-time job. Permit Authorized Officials to indicate full-time or part-time status of the

borrower and the average number of hours worked per week by adding “full-time” and “part-time, ___ average hours worked per week” fields.

7. Allow Authorized Officials to indicate that a borrower is a current employee

Section 4, Item 2(a): Permit an employer to indicate an “end date” for the certification period, and to further indicate that a borrower is still an employee, by adding a “currently employed” check box.

8. Clarify what “additional documentation” should be retained by borrowers

The instructions state that borrowers should retain copies of additional documentation such as W-2 forms, pay stubs, and “any other documentation” that would establish an employer’s eligibility as a public service organization. If borrowers must retain all W-2s and pay stubs, state that clearly. If other documentation in addition to W-2s and pay stubs may be required, state specifically what may be required. Clarify the procedure and options if records are damaged or destroyed.

9. Establish an alternative verification procedure for cases in which no Authorized Official is able to sign an Employment Certification form

Some borrowers have been in qualifying public service employment since October 1, 2007. Public service organizations, particularly nonprofits, do not always continue operating over the long term. Clarify the procedure and options if Authorized Official is not available to sign, for example if the public service organization is no longer in operation. Indicate that alternative documentation of qualifying employment, for example W-2s or pay stubs, may be submitted in lieu of an Authorized Official’s certification in these circumstances.

10. Procedures for borrowers who consolidate loans after making qualifying payments

It will sometimes be necessary to consider the underlying loans separately even after consolidation has repaid the original underlying loans. There will be circumstances in which borrowers may earn PSLF on portions of consolidation loans (for example because they made some number of qualifying payments on underlying loans that were later consolidated). In these instances, it will be necessary to consider which portion of the consolidation loan is eligible for PSLF discharge.

There is significant precedent for allowing PSLF on only those portions of consolidation loans that are eligible for discharge. Although a consolidation loan repays the underlying loans that make up the new consolidation loan, consolidation loans do not always extinguish defenses applicable to the underlying loans. See Crawford v. American Inst. of Prof’l Career, Inc., (D. Ariz. Feb. 8, 1996), available at www.consumerlaw.org/unreported.

Additionally, there are circumstances in which portions of consolidation loans are eligible for statutory discharge while other portions are not. In these instances, it is necessary to consider which of the underlying loans are eligible for discharge and which are not

- When consolidation loan borrowers qualify to receive **school-related discharges** (closed school, false certification, and unpaid monthly refund), only the portion of the consolidation attributable to the discharge-eligible loan will be discharged. 34 C.F.R. § 682.212(d)-(f).
- For **joint consolidation loans**, if one of the borrowers dies or becomes disabled, the portion of the joint consolidation loan attributable to that borrower’s loans will be discharged. 34 C.F.R. §§ 682.402(a)(2), 685.220(1)(3)(i), (iii).

- If one joint consolidation loan borrower qualifies for a school-related discharge or for **teacher loan forgiveness**, the portion of the joint consolidation loan attributable to that borrower's loans will be discharged. 34 C.F.R. § 685.220(1)(3)(k)(iii).

Thank you for considering these comments. I look forward to continuing to collaborate with the Department as you establish procedures for administration of the Public Service Loan Forgiveness Program. Please do not hesitate to contact me at heather@askheatherjarvis.com or 843-441-3656 if I can provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Heather". The script is cursive and fluid.

Heather Jarvis