

June 14, 2011

U.S. Department of Education
400 Maryland Avenue, SW., LBJ
Washington, DC 20202-4537
(sent via email to icdocketmgr@ed.gov)

These comments are in response to the April 15, 2011 *Federal Register* notice (76 FR 04563) seeking public input about forms serving as “the means by which eligible borrowers in the William D. Ford Federal Direct Loan Program will indicate eligible employment for the purpose of final forgiveness under the Public Service Loan Forgiveness Program” (OMB Control Number 1845-NEW). The Institute for College Access & Success (TICAS) is a national nonprofit, nonpartisan research and policy organization working to make higher education more available and affordable for people of all backgrounds. Our work focuses primarily on financial aid issues, including how communication and processes at every stage – from early awareness through loan repayment – can better support both enrollment and completion.

Our initiatives include the Project on Student Debt, which developed the policy framework that formed the basis of the Income-Based Repayment plan for federal student loans. Congress established both Income-Based Repayment (IBR) and Public Service Loan Forgiveness (PSLF) as part of the College Cost Reduction and Access Act of 2007, and most borrowers who qualify for PSLF will do so by making at least some payments through IBR. Through our efforts to increase public awareness of these programs (see, for example, www.IBRinfo.org), we frequently hear from borrowers struggling to understand and navigate the requirements for PSLF.

We applaud the Department of Education’s efforts to ensure that federal student loan borrowers can verify qualifying employment for PSLF on an ongoing basis with its new Employment Certification form. Our comments are made with two interrelated goals in mind: the form should be as easy as possible for borrowers to understand and use; and the overall process should minimize administrative burdens for both applicants and the Department. The draft form and instructions are a strong start, but we believe that several changes are needed to achieve these two goals.

Throughout the following comments, the use of italics (*italics*) indicates suggested additions to the text of the final forms, and crossed out text (~~crossed out text~~) indicates suggested deletions.

“Instructions for Completing Employment Certification for Public Service Loan Forgiveness” Form

1) “Before You Begin” Section

- The instructions direct applicants for PSLF to carefully review the Dear Borrower Letter both in this section and in Section 3. While the Dear Borrower Letter was not included in the materials accompanying the *Federal Register* notice referenced above, we urge the Department to ensure

that the final Dear Borrower Letter is easy for borrowers to understand and reflects stakeholder comments to that end on the draft letter circulated earlier this year.

2) “General Instructions” Section

- There is nothing marked “Section 1” under “General Instructions,” yet there is a “Section 2”, “Section 3” and “Section 4.” To correspond to the numbered sections in the certification form itself, please add “*Section 1:*” before the sub-headline “Instructions for Completing and Submitting the Employment Certification Form.”
- “Instructions for the Borrower” Sub-Section
 - The first sentence of the first paragraph references “the required 120 separate, monthly, qualifying payments” but does not mention the very important fact that these payments need not be consecutive. We strongly suggest adding this clarifying sentence: “*These 120 qualifying payments do not need to be consecutive.*”
 - There are two confusing references to the “the Department”: “If the Department receives an Employment Certification form from you...”; and “If you submit the Employment Certification form(s) to the Department ...” However, other instructions both above and below specify that borrowers should submit completed forms to their Direct Loan servicer, and that the Direct Loan servicer is the entity that will be processing the documents. We urge the Department to clarify this within the instructions and be consistent throughout.
- “Instructions for Completing and Submitting the Employment Certification Form” Sub-Section
 - More emphasis on the importance of retaining documentation will help both borrowers and the Department avoid difficulties related to tracking down essential paperwork up to -- or even more than -- 10 years after the fact. We suggest bolding or underlining the bullets that instruct borrowers to keep a copy of their employment certification forms for their records, and to save additional document, such as W-2s and pay stubs.
 - For both readability and brevity, we suggest these small changes to the text immediately preceding the examples of documents to retain: “You should also retain copies of additional ~~documentation~~ *documents that confirm of your public service paid-employment with the public service organizations for your records, but ...*”

3) Section 4: Certification of Employment” and “Instructions for the Authorized Official” Box

- We recommend including the definition of authorized official within the box, or else referencing the definition in Section 6 of the Employment Certification Form, as this definition is extremely important but not highly visible.
- The first sentence of **Item 2(a)** simply instructs an Authorized Official to “[p]rovide the borrower’s starting and ending dates of employment.” An Authorized Official who has previously submitted a certification form might misunderstand that instruction and fill in a starting date that matches the end date of the previously filed form. In order to avoid this potential confusion, please consider adding the following sentence modifying Item 2(a) as follows (*italics indicate additions*):

“Item 2a: Provide the borrower’s starting and ending dates of employment.
Note that the start date remains the borrower’s first day of employment with your organization even if you have submitted a previous certification form for

the borrower. If the borrower is still employed with your organization at the time the certification is completed, put today’s date as the ending date.”

- As currently written, **Item 2(b)** may inadvertently trigger rejection of the submitted form. Some borrowers will meet the full-time requirement by working in more than one part-time job. Please consider making the following clarifying changes to these instructions and corresponding changes to the certification form itself (described in more detail in our comments on the certification form below):

“**Item 2(b):** Check ~~YES~~ *FULL-TIME* if the borrower is/was employed full-time in accordance with the definition in Section 6 of the Employment Certification form. If the borrower’s *paid employment* does/*did* not meet this definition of full-time employment, check ~~NO~~ *PART-TIME* and provide the average number of hours per week the borrower is/was employed at your public service organization.”

- **Item 3** inadvertently misstates the statutory and regulatory definition of a public service organization. Specifically, the third sentence currently reads, “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...” In fact, public and 501(c)(3) employers need not provide any of the listed services – only private organizations must do so to qualify as public service organizations. Adding the word “private” to this sentence will bring the form in line with the law, help prevent borrower and employer confusion, and ease administrative burdens on the Department. However, even corrected, Item 3 only addresses the narrow exceptions for organizations that are neither public nor 501(c)(3) nonprofit employers, while failing to mention the two main categories of qualifying employers. An alternative approach would leave more of the details to the content of the certification form itself, as is already the case in Item 2b with reference to the definition of “full-time.”

To conform to the statutory and regulatory definitions of qualifying employment, we urge the Department to take one of the following two approaches in revising this section:

- Approach 1: “**Item 3:** Check the box next to the category which best describes your public service organization. If ~~the employing your~~ organization is a private organization that provides public service(s) – ~~(category (e))~~, *only* -- check the box(es) that describes the type(s) of public service(s) ~~your organization it~~ provides. ~~An~~ *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.”
- Approach 2: “**Item 3:** Check the box next to the category which best describes your public service organization. *See Section 6 of the Employment Certification form for a detailed definition of qualifying organizations.*” Delete the rest of the section as currently written. See below for our recommended changes to the definition in Section 6.

“Employment Certification for Public Service Loan Forgiveness” Form

1) Section 2: Borrower Identification

- **Name:** The Instructions form tells borrowers: “Enter your last name, then your first name and middle initial.” To prevent unnecessary invalidations of Employment Certification forms because borrowers entered their names differently, the form itself should also specify the correct order. This is easily accomplished by including these words, in this order, directly beneath the “Name” line: “*Last Name,*” “*First Name,*” “*Middle Initial.*”

Also, recent programs, such as the Civil Legal Assistance Attorney Repayment Program, have encountered difficulties processing applications for borrowers whose names had changed, for example as a result of marriage. Adding a “Former Name” field will serve to prevent borrower and employer confusion and ease the administrative burden on the Department.

- **Address:** There is not enough room for borrowers to provide their address(es), particularly street addresses. Please allow more room so that borrowers can provide complete addresses.

2) Section 3: Borrower’s Certification Requests, Authorization, and Understandings

- **Borrower Understanding Statements Sub-Section**

- As discussed above, it is important to clarify that the 120 qualifying payments need not be consecutive. In **statement (1)**, we recommend adding the following sentence at the end: “*These 120 payments do not have to be consecutive.*”
- To clarify that borrowers are eligible if they are working full-time through part-time jobs at two or more public service organizations, the Department should add an “(s)” to the end of “organization” in **statements (1) and (2)**. This change should also be made in **Section 5: Eligibility Requirements, item (3)**. For the same reason, we strongly suggest using the phrase “while employed full-time by” instead of “full-time employee of” in statements (1) and (2). For example, “...while I was employed full-time by a public service organization(s)”.
- Currently, in **statement (5)**, the Department only states that it will notify borrowers in writing of the number of qualifying payments and the remaining number required for forgiveness. If this is the only way borrowers can tell if their forms have been approved or denied, it will create considerable confusion and frustration. Borrowers must also be informed about whether their forms have been approved or denied, and if denied, the reasons for denial. The Department says that forms will not be processed if information is missing, but there is no information about whether borrowers will be informed that information is missing and what information that is, or provided an opportunity to fix errors. Borrowers should also be provided a specific reason if their employment is determined not to qualify as public service employment, and there should be a clear appeals process in place if a borrower believes that the determination was made in error.

We recognize that the Department is not providing final approval for forgiveness after each annual submission. However, because there are consequences for ultimate approval, a borrower must have meaningful opportunities to request review of denials and of erroneous accounting of qualifying payments, and to appeal the Department’s determinations, if necessary. To that end, we recommend the following additions to **statement (4)**:

“(4) I am not required to submit any Employment Certification(s) before applying for loan forgiveness, but if I do, the Department will review each Employment Certification I submit to ensure that it is complete, and will verify that my employer qualifies as a public service organization, and that

the loan payments I made during the period covered by the Employment Certification(s) are qualifying payments. Following this review, the Department will notify me in writing of the number of qualifying payments I have made and the number of qualifying payments I must make before I am eligible to apply for public service loan forgiveness. *This notification will also include information on how I may address an erroneous accounting of the number of qualifying payments made or remaining.*

“If the Department determines that the form I submitted was incomplete, that my employer does not qualify as a public service organization, and/or that my loan payments during the period covered by the Employment Certification(s) are not qualifying payments, the Department will notify me in writing along with the reason(s) for those determinations. This notice will also specify what additional documentation I must provide to complete or correct previously submitted forms.”

3) Section 4: Certification of Employment

- **Item 2: Borrower’s Employment Status**

- As noted above in our comments on the Instructions form, the way the question in item **2(b)** is currently written may inadvertently trigger rejection of the submitted form. Some borrowers will meet the full-time requirement by working in more than one part-time job.

To greatly improve accuracy and clarity for those both completing and processing this form, we strongly recommend that you change the question to read: “Is/was the Borrower employed full-time *or part-time* by your organization?” The text accompanying the check boxes immediately below should also be changed to read: “**Yes Full-Time**”, “**No Part-Time**” and “If **NO PART-TIME**, average number of hours per week:_____.”

- Also in item **2(b)**, the language about how to account for FMLA and other authorized leave time should be clarified to minimize the administrative burden for the Department and for borrowers. Currently the form states that such leave “is not considered in determining the average hours worked on an annual or contract basis.” However, it is unclear whether this means such leave time should be included or left out of hours worked when calculating whether the borrower was working full-time. The same problem arises in the definition of “Full-time” in **Section 6**. We recommend that for the purposes of PSLF, the Department count FMLA and other authorized leave time as hours worked in qualifying employment.

- **Item 3: Types of Public Service Organization**

- We are very concerned in the potential confusion that could result from the definition of “public service organization” both in items **3(a-e)**, and in **Section 6: Definitions**. Right now the definition reproduces the language of the regulation itself (§ 685.219), a confusing list that combines both broad categories and certain subsets of those categories. For example, both “A public child or family service agency” and “A Tribal college or university” are subsets of the broad category “A Federal, State, local, or Tribal government organization, agency, or entity,” but they are all given equal weight. Our experience with borrowers trying to understand PSLF since its inception is that such language leads them to assume incorrectly that only certain professions are covered. We suggest instead that the Department describe the three broad types of qualifying employers (public, nonprofit, and the private exceptions, with the basic details of how these three are defined in Section 6), not types of jobs you can

perform, and include a statement that eligibility is tied to the type of employer, not any specific job or function. If examples of subsets of employers are provided, they should be clearly presented as such (e.g., such as, but not limited to, public schools and state and tribal colleges).

Section 6: Definitions

- Under the first definition, for “Eligible Loans,” the third bullet says that Federal Direct PLUS Loans are eligible for PSLF. This could mislead borrowers to believe that Parent PLUS loans are generally eligible. We recommend a note clarifying that while Grad PLUS loans are eligible, Parent PLUS loans are only eligible if they are incorporated into consolidation loans that are repaid through ICR. A link to the Department’s Q&A on this topic could be a reasonable substitute for a long explanation of the narrow circumstances in which a Parent PLUS loan might be eligible for PSLF (this Q&A is online at http://studentaid.ed.gov/students/attachments/sitesources/PSLF_QAs_final_02%2012%2010.pdf).

We also support the following recommendations, which are also mentioned in the comments of the National Consumer Law Center, Equal Justice Works, and Heather Jarvis.

1) Additional Documentation

- The Instructions for Completing Employment Certification for Public Service Loan Forgiveness 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. It would be helpful to provide Borrowers and Authorized Officials with a list of examples of documentation, including what proof of provision of public services, 501(c)(3) status or governmental affiliation would be considered sufficient for the Department.
- In addition, it would be helpful to know what circumstances would cause the Department to request that additional documentation be submitted. And, most importantly, Borrowers need to know the consequences if they or an Authorized Official is unable to provide additional documentation if it is requested.

2) Lost or Unavailable Documentation

- In some cases, records may be damaged or destroyed, or a public service organization may no longer exist such that certain documentation may be unavailable. For example, borrowers may have been in qualifying public service employment starting October 1, 2007. In some instances, a public service organization for which a Borrower formerly worked may no longer operate and an Authorized Official may not be available to sign the Employment Certification for Public Service Loan Forgiveness. It would be extremely helpful if the Department would clarify the procedure and options if a Borrower cannot produce the required documentation.
- The Department also states that it will retain the interim forms. However, in the event the Department or its contractors lose submitted forms, it is unclear what the consequences are for borrowers who do not keep copies because they are relying on the Department’s

retention system. At a minimum, it should be explicit that borrowers are able to submit copies if the Department has lost their initial forms.

3) Procedures for Borrowers who Consolidate Loans After Making Qualifying Payments

- In some instances, borrowers may make qualifying payments on loans that are later consolidated. We urge the Department to allow these payments to count toward forgiveness, by tracking the underlying loans separately as necessary. There is significant precedent for applying PSLF only to those portions of consolidation loans that are eligible for discharge, as detailed by Heather Jarvis in her comments.

Thank you for the opportunity to comment on the draft Employment Certification forms for the Public Service Loan Forgiveness program. We look forward to providing further input as you implement and improve the PSLF application process. If you have any questions or concerns regarding our comments, please do not hesitate to contact me by phone at (510) 318-7900, or via email at ljasher@ticas.org.

Sincerely,

Lauren Asher
President
The Institute for College Access & Success