June 13, 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

Re: Proposed Employment Certification Form for Public Service Loan Forgiveness (OBM Control Number: 1845-NEW)

Dear Mr. Hyler:

On behalf of the American Bar Association (ABA), I am pleased to provide these comments regarding the Department of Education’s proposed instructions and certification form that will serve as a means by which eligible borrowers can indicate their eligible employment for the purpose of obtaining loan forgiveness under the Public Service Loan Forgiveness Program (PSLFP).

We commend the Department for developing a form that will enable borrowers to verify that their employment qualifies for the PSLFP. This letter provides comments regarding both the instructions and the certification form that address ways in which the ABA believes both documents can be improved to add clarity and avoid both confusion and errors on the part of borrowers, employers and the Department.

Comments on the Proposed Instructions for Completing Employment Certification for Public Service Loan Forgiveness

1. Clarify to whom the certification form should be sent

Paragraphs two, three and four of the “General Instructions” section seem to indicate that the certification form may be sent to either the loan servicer or the Department. (Paragraph two states “You may submit the Employment Certification form to your Direct Loan Servicer…”; Paragraphs three and four state, respectively, “If the Department receives an Employment Certification form from you…..” and “If you submit the Employment Certification form(s) to the Department…..”) If the Department intends that the form can be sent to either, the instructions
should clearly state that in the first paragraph. However, to avoid confusion on the part of the borrowers and the keepers of the completed certification forms, we believe that a better approach would be for either the loan servicer or the Department to be the recipient of the certification form, but not both. We leave it to the experience of the Department to determine which entity should receive the form, but whichever it is, the instruction form should clearly state to whom the form should be sent. That clarity is lacking in the proposed version.

If it is decided that borrowers should send the certification form only to the Department or if the Department remains one of two possible recipients of that document, the address of the Department should be added to the General Instructions as a convenience for the borrower. Currently, the address is not on either the general instructions or the certification form.

2. Clarify that the borrower will be notified in writing of any problems with the certification form identified by the Department

Currently, the “General Instructions” section, paragraph three, indicates that the if the borrower submits the Employment Certification form(s) to the Department prior to being eligible to apply for forgiveness, the Department will conduct an initial review to determine if the form is complete, the employer qualifies as a public service organization, and the loans made during the period are qualified loans. We assume that since the Department plans to make these determinations, it also intends to notify the borrower of any problems. However, the instructions do not state this. As a result, we recommend that this section also indicate that the Department will notify the borrower in writing if there are any problems with the completeness of the form or the adequacy of the information provided so that timely corrections may be made by the borrower.

3. Correct the description of a potential “non-qualifying” organization

The “Instructions for the Authorized Official,” Item 3, third sentence, contains a description of organizations that do not qualify as public service organizations. However, that description does not match the definition found on the certification form. [See Section 4: Certification of Employment, #3(e).] The certification form language correctly restates the language found in the statute and regulations. Specifically, it is a private organization that does not qualify unless it provides one of the listed public services. The word “private” is missing from the third sentence in this portion of the instructions and should be added to avoid any confusion and to be consistent with the language found in the statute, regulations and certification form.

Comments on the Proposed Employment Certification Form for Public Service Loan Forgiveness

1. Obtain information regarding the name under which the loan was obtained

In Section 2: Borrower Identification, we strongly recommend a line be added for the name under which the loan was obtained, if different from the borrower’s current name. There are borrowers who obtain loans in one name and due to marriage or divorce will have a different last
name at the time of submitting certification forms. We know from the experience of those in this situation who submitted applications to the Department for the Civil Legal Assistance Attorney Repayment Program that without a line for the former name, problems can arise. Specifically for that program, applicants who were otherwise eligible were erroneously denied because there were no outstanding loans listed in their current names.

2. Add language indicating that if the Department makes any determinations that would disqualify the borrower from eligibility, the Department will notify the borrower in writing of that decision

In Section 3, 4th Acknowledgement, it is stated that the Department will review each Employment Certification submitted to it and verify that a) the employer qualifies as a public service organization; b) the loan payments made for the period covered by the certification form are qualifying payments; and c) the certification form is complete. The form also indicates that the Department then will notify the borrower in writing of the number of qualifying payments that have been made and the number of payments that remain before the borrower is eligible to apply for public service loan forgiveness.

We recommend that the borrower be notified in writing if the Department determines that an employer or specific payments do not qualify or if the form is determined to be incomplete. We also recommend that the written notice contain information regarding the reasons for the determination. It may well be the intent of the Department to provide this information in the written notification of qualifying payments it will send to the borrower, but, as currently written, the certification form does not indicate this.

3. Permit the employer to indicate that the borrower is a current employee

In Section 4: Certification of Employment, #2(a), the employer is asked to indicate the dates of employment with a start and end date. A parenthetical on that line states “If there is no End Date, put today’s date.” We recommend that to avoid any confusion a line be added so that the employer can indicate that the borrower remains currently employed as of the end date listed. We recognize that an end date is needed on the form for purposes of having a finite period of time considered for a particular certification period. However, it would be best if language were added so that the employer could accurately reflect that the borrower is still an employee rather than be required to sign a document that may appear to provide incorrect information as to the current employment status of the borrower.

4. Permit the employer to indicate that the borrower is a part-time employee

In Section 4: Certification of Employment, #2(b), an employer is asked to indicate if the borrower is a full-time employee. While to qualify for the PSLFP, a borrower must be employed full-time, it is possible for several part-time positions to qualify the borrower for full-time employment status under the program. As a result, to avoid confusion and possible incorrect denials of eligibility, we recommend a line be added on which the employer can indicate that the borrower is a part-time employee. The Department may also want to consider adding language
by which a borrower who is submitting certifications forms from several part-time employers for the same certification period can indicate that multiple submission.

Thank you again for developing the draft Certification Form and for providing this opportunity to submit comments.

Sincerely,

Thomas M. Susman