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 (PSLF) program.

We commend the Department of Education (Department) for revising the form and instructions in response to the ABA and others’ comments. This letter provides comments regarding both the instructions and the certification form that address a few additional 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. We also believe the recommended changes will enhance the quality and utility of the information collected.

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

1. Clarify further to whom the certification form should be sent.

The Department added language to clarify that the completed certification form should be sent to the Direct Loan servicer. We recommend changes to the language to increase clarity. Separating and moving the two instructions about obtaining the authorized official’s certification and submitting the form to the Direct Loan servicer should reduce confusion. Specifically, we recommend
reorganization of language found in the first two paragraphs of the “Instructions to Borrowers” as follows:

Use as many Employment Certification forms (pages 1-2 only) as needed to certify your full-time employment while making the required 120 separate, qualifying monthly payments. These 120 qualifying payments do not have to be consecutive. You must obtain an authorized official’s certification on the Employment Certification form. For periods in which you are/were concurrently working part-time with more than one public service employer and the total average hours you worked per week meets the definition of full-time employment, submit an Employment Certification form (pages 1-2) for each employer.

The U.S. Department of Education contracts with servicers to answer questions about and manage the repayment on Direct Loans. When an Employment Certification form is completed, it should be submitted to your Direct Loan servicer. Submission of Employment Certification forms before you are eligible to apply for PSLF is optional but we encourage you to submit certifications annually or whenever you leave a qualifying position.

2. Expand circumstances when borrower should submit a former or maiden name.

The Department revised the form and instructions to include collection of a former or maiden name when a Direct Loan had been applied for and granted under that name. However, a borrower may have used a former or maiden name when making payments. This situation should be added to the instructions. This will avoid confusion and lead to more accurate data collection in circumstances such as when a Borrower may have been granted a Direct Loan under a maiden name, made payments under a different married name, and then made payments after she was divorced and changed her name back to her maiden name.

We recommend the instructions be changed to read:

Section 1, Item 2b: Enter any other name, such as a former or maiden name, under which you applied for and were granted Direct Loan(s) or made payments on Direct Loan(s).

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

The Department added the Note in Section 4 to alert PSLF applicants about potential ineligibility. The language however, is confusing, and could lead some eligible borrowers to think they are not eligible. The current language uses the word “including” which usually means that the list following it is not comprehensive. We believe that the list is comprehensive currently; if it is not, we request that the Department create a comprehensive list.
We are particularly concerned about borrowers who are prosecutors or public defenders and receive loan repayment assistance from the Department of Justice’s John R. Justice Program, which provides funding to state agencies to create loan repayment assistance programs. These recipients may believe they are ineligible for the same period of service due to the language found in the Note to Section 4 although the statute authorizing that program does not create any such ineligibility. In addition, borrowers who receive assistance from other federal loan repayment or forgiveness programs may also think they are ineligible, when they are not.

We recommend the following changes to the Note to clarify when a borrower is ineligible for PSLF. If there are additional programs creating ineligibility, we request that the Department add those as well:

NOTE: You are not eligible to apply the same period of service to receive a benefit under the PSLF Program and certain other Federal loan forgiveness or repayment assistance programs, which currently are Teacher Loan Forgiveness, Service in Areas of National Need, and Civil Legal Assistance Attorney Student Loan Repayment.

Thank you for providing this opportunity to submit comments.

Sincerely,

Thomas M. Susman