

Comments on Notice of Proposed Information Collection Requests, 76 Fed. Reg. 21337 (April 15, 2011) Proposed Employment Certification for Public Service Loan Forgiveness

The following comments are submitted on behalf of the National Consumer Law Center's low-income clients. The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates and provides direct legal representation to student loan borrowers. Most of the clients we represent are low-income borrowers living in Massachusetts. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable.¹

We support the Department's effort to create an interim process to confirm public service forgiveness eligibility. However, we have a number of concerns about the proposed forms, as detailed below.

Extent of Review Process, Appeal Rights and Consequences of Denials

1. Submitting Additional Information

The Department states that it will conduct an initial review to check that the form is complete, that the employer qualifies as a public service organization, and that the loan payments are qualifying payments. The form requires both the borrower and an authorized official to confirm all of this information. There do not appear to be a requirement that the borrower or authorized official submit corroborating or additional documentation. In fact, the Department states that borrowers should retain copies of additional documentation, but should not submit these documents unless the Department requests them. There does not appear to be any instructions to authorized officials about additional documentation.

We urge the Department to provide information about the circumstances in which it is likely to request additional information from borrowers or employers.

¹ See the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (4th ed. 2010).

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Most important, borrowers need to know the consequences if they do not provide requested information or if their employers do not provide requested information. Most important, is failure to provide this information grounds for denial

2. Notification of Action

A related issue that is not addressed in the notice is whether borrowers will be informed if their submissions are approved or denied. The Department states that it will send notice in writing to borrowers of the number of qualifying payments and the remaining number required for forgiveness. It is not clear if this is the only way a borrower can tell if his/her form has been approved or denied. If so, this is insufficient and likely to create considerable confusion. Borrowers should be informed separately whether their forms have been approved or denied and if denied, the reasons for denial. The Department says that the form will not be processed if information is missing, but there is no information about whether borrowers will be informed that information is missing.

3. Consequences of Denials

The Department does not provide any information about the consequences of denials. For example, will the Department later accept information from a borrower if his/ her initial form was denied? If not, it is particularly detrimental to borrowers that there is no appeal or review process discussed or specified in the notice. We recognize that this is a difficult situation because the Department is not providing final approval for forgiveness after each interim submission. However, particularly if there are consequences for ultimate approval, a borrower must have a right to appeal or request review of denials or other adverse actions.

Retention of Information

The Department states that it will retain the interim forms. Based on our experience, the Department or its contractors often lose forms. It is unclear what the consequences are for borrowers who submit forms, but do not keep copies because they are relying on the Department's retention system. At a minimum, borrowers should be able to submit copies if they have retained them and they are informed that the Department has lost their initial forms.

Consolidation Loans and Forgiveness

We also have questions about what will happen to borrowers that make qualifying payments on loans that are later consolidated. We urge the Department to allow these payments to count toward forgiveness even if it means that underlying loans are tracked separately. In these cases, an interim form submitted by a borrower who later consolidates should still be considered evidence of qualifying payments.

Thank you for your consideration of these comments. Please feel free to contact Deanne Loonin if you have any questions or comments. (Ph: 617-542-8010; E-mail: dloonin@nclc.org).