

## MEMORANDUM

**Date:** November 18, 2021

**To:** U.S. Department of Education

**From:** Persis Yu and Joshua Rovenger, Negotiators for Legal Assistance Organizations that Represent Students and/or Borrowers

**Re:** False Certification Proposals: Disqualifying Status and Group Process

We propose the following changes to the false certification proposal at § 685.215:

**Proposal 1: Disqualifying Status:** At session two, we urged the Department to revert to its earlier position and expand the scope of disqualifying status. To do so, we propose the following changes. This proposed language is largely modeled on Colo. Rev. Stat. 23-64-123(1)(i).

The Department should modify (a)(1)(iv) to say:

Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended, or certified the eligibility of the student where the institution knew or reasonably should have known that the student was unlikely to qualify for employment in the field for which the education was designed.

The Department should make a corresponding change at (c)(2) as follows:

In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) –

(i) Did not meet requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, or

(ii) Did not meet requirements for employment (in the student's State of residence) where the institution knew or reasonably should have known that the student was unlikely to qualify for employment in the field for which the education was designed.

**Proposal 2: Group Process:** As discussed in our prior memoranda, we believe that the Department should provide a path for borrowers to submit a group discharge application. The Department can effectuate this by adding section (c)(10) as follows:

*Group application:* A state Attorney General or non-profit legal services representative may submit to the Secretary an application for a group discharge under this section. The Secretary determines whether the available evidence supports the claim for discharge by considering all available evidence, including the evidence enumerated in (d)(3) of this section. The Secretary then issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the applicant, upon request, copies of the evidence. The Secretary's denial of a group application shall have no preclusive effect or bearing on an individual's application under this section.