

PSLF CHANGES AFFECTING ASSIGNED COUNSEL

August 2023

The Public Service Loan Forgiveness Program (PSLF) was established in 2007 to help address a recruitment and retention crisis within public service professions. The program forgives the balance of a person's federal student loan after they have made 120 monthly payments while providing a qualifying public service. However, when borrowers began to apply to have their loans forgiven, more than 98% of their applications were denied.

In 2021, the Department of Education (ED) established a limited waiver that relaxed certain technical requirements that had prevented borrowers from accessing loan forgiveness, and some of those changes were made permanent by new regulations that became effective on July 1, 2023. These regulations also have altered the program in new ways to make it more accessible to those working in public service. More information about these changes is available at studentaid.gov.

State Law Exception for Contracted Employees

Some individuals providing public defense and other public interest law services, including attorneys appointed by courts or other entities to represent indigent clients, have been excluded from PSLF in the past because of the way that ED had previously defined “qualifying employment.” **Many of these individuals are now eligible for PSLF under the new regulations.** ED continues to consider direct employees (people who receive W-2 forms from their employer) to be eligible for PSLF. However, an **exception** has also been created that establishes eligibility for people who “who work as a *contracted employee** for a qualifying employer in a position or providing services which, under applicable state law, cannot be filled or provided by a direct employee of the qualifying employer.”**

Qualifying employers are permitted to certify PSLF forms for borrowers if it is **their own determination** that indigent defense cannot be performed by a direct (W-2) employee of that organization. The regulation **does not** require that state law expressly prohibit qualifying services from being performed by a direct employee in order to meet the exception, only that it is a consequence of state law. Public defense delivery systems vary considerably between states and local jurisdictions, but some common situations in which contractors who are interested in PSLF may be able to certify their employment include, but are not limited to:

- ✓ An attorney who is appointed to represent indigent clients full time*** in a state in which state law or regulation has established a statewide assigned counsel (or hybrid) system or program.
- ✓ An attorney who is appointed to represent indigent clients full time in a state in which an entity created by state law or regulation (such as a public defender commission), has established an assigned counsel (or hybrid) system or program.
- ✓ An attorney who is appointed to represent indigent clients full time in a jurisdiction (e.g. a county, municipality, or court system) that has chosen to operate an assigned counsel system, where its authority or responsibility for doing so is derived from state law.

These changes generally apply retroactively. Borrowers can submit PSLF forms to certify employment for any period of full-time public service since October 2007, if that employment would qualify under the new regulations. Borrowers seeking to certify employment or apply for forgiveness should complete and submit the **PSLF Form**.

The information in this document does not, and is not intended to, constitute legal advice. This document is for general informational purposes only.

* Who is a Contracted Employee?

A “contracted employee” can include an individual practicing as a sole proprietorship or as a partner, owner, or employee of a partnership, group, or professional corporation. A contracted organization may also be a for-profit entity and employees may receive an IRS W-2, a 1099, and other tax forms.

** What is a Qualifying Employer?

A qualifying employer means a U.S.-based federal, state, local, or tribal government organization, such as a court; a not-for-profit organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code (such as a managed assigned counsel programs); or other not-for-profit organizations that devote a majority of their full-time equivalent employees to providing qualifying public services. An attorney may be appointed to cases by a qualifying employer (e.g. a court) but receive payment from another entity (such as a county, or a third-party payment company). In this case, the contracted employee should **report the EIN of the qualifying employer on their PSLF form** (not their direct employer whose EIN appears on their W-2 or 1099) and have an authorized official of the qualifying employer certify their employment.

*** What is “full time”?

Full-time employment means working for a qualifying employer(s) for a weekly average, alone or when combined (e.g. if an attorney is working in more than one jurisdiction), equal to at least 30 hours during the period being certified. This period is a minimum of one month. Attorneys who are not compensated on an hourly basis may still qualify **if their employer determines that their caseload during the period was equivalent to at least 30 hours a week**. This does not exclude attorneys who also represent paying clients, provided they meet the minimum required hours of indigent defense.