

Concern

Having the Secretary make an independent determination of “substantial illegal activity” by a currently qualified employer, even with the “preponderance of the evidence” standard, effectively makes the Secretary a judicial agency to make what would otherwise be a tort determination that would normally be handled at court and, by the Sixth and Seventh Amendments, would normally provide the qualified employer many due process rights which would not be present in an administrative determination by the Secretary.

Therefore, the Primary Negotiator of U.S. Military Service Members, Veterans, or Groups Representing Them proposes the following changes to the original Issue Paper language submitted by the Department (“2025 PSLF Issue Paper_clean_06.24.25.docx Final”).

If the below changes are made to subsection (h), then the additional procedures for “determining when an employer engaged in activities which have a substantial illegal purpose” would be unnecessary, and should be struck.

Proposed Language

(h) *Standard for determining a qualifying employer engaged in activities that have a substantial illegal purpose.* The Secretary is notified by a federal or State criminal court of law that a currently qualified employer engaged in activities that have a substantial illegal purpose:

(1) A final judgment of violation of criminal law by a State or Federal court, whereby the employer is found to have engaged in activities that have a substantial illegal purpose;

(2) A plea of guilty or *nolo contendere* to a criminal charge, whereby the employer admits to have engaged in activities that have substantial illegal purpose or pleads *nolo contendere* to allegations that the employer engaged in activities that have substantial illegal purpose; or

(3) A settlement or plea bargain to a criminal charge that includes admission by the employer that it engaged in activities that have a substantial illegal purpose described in paragraph (h) of this section.