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September 17, 2025

Tamy Abernathy
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

RE: Document ID ED-2025-OPE-0016-7221

Dear Tamy Abernathy,

On behalf of the Lawyers' Committee for Civil Rights Under Law, I respectfully submit these comments in response to the Department of Education's proposed rulemaking to amend the regulations of the Public Service Loan Forgiveness Program under 34 C.F.R. § 685.219, which would exclude employers engaged in activities with a "substantial illegal purpose." These proposed regulations give the Department of Education unilateral power to determine what is considered illegal, allow the Department to redefine what constitutes a public service career, and set a dangerous precedent by revoking PSLF eligibility without due process. These provisions will not only harm employers and employees, but also the plethora of hardworking students across the country who entered public service careers out of passion for serving others and not just receiving a paycheck. The impact of severely narrowing PSLF eligibility will be felt by countless individuals working in public service careers, but these changes will undoubtedly significantly impact Black people, other people of color, and low-income communities across a range of public service careers. **The Lawyers' Committee for Civil Rights Under Law writes to oppose this NPRM and strongly urges the Department of Education to withdraw this rulemaking that would unfairly target individuals working in public service careers across the country.**

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to mobilize the nation's leading lawyers as agents for change in the Civil Rights Movement. Today, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. The Lawyers' Committee implements its mission and objectives by marshaling the pro bono resources of the bar for litigation, public policy, advocacy and other forms of service by lawyers to the cause of civil rights. The Lawyers' Committee strives to guarantee that all students receive equal educational opportunities in public schools and institutions of higher learning. Given the rapidly changing economy and persistent racial inequality, it is particularly important today for the Lawyers' Committee to advocate for policies

that make the promise of education a reality while reducing burdens on historically excluded communities.

I. Background on the Public Student Loan Forgiveness (PSLF) Program

In 2007, Congress passed the College Cost Reduction and Access Act, which aimed at lifting the burden of repayment of student debt by expanding Pell grants, cutting interest rates on Stafford loans, and most notably creating the PSLF program. The PSLF program provides loan forgiveness to federal Direct Loan borrowers who make 120 monthly payments under a qualifying repayment plan, while working full-time for a qualifying employer.¹ Congress defined eligible employers to include all local and state governments and 501(c)(3) nonprofits. Within those employment sectors there are teachers, nurses, and military service professionals, to name just a few fields that could be impacted. The Trump Administration's proposed rule unlawfully usurps congressional authority to redefine PSLF and to weaponize it against those whose work does not fall in line with the Administration's agenda or those who disagree with its policies. ED has no statutory authority to redefine employer eligibility for PSLF.

The PSLF program has undergone several changes since its inception, but the forthcoming changes pursuant to *Restoring Public Service Loan Forgiveness* will be most significant; notably the NPRM is nearly identical to the instruction set forth in the executive order.² In this order, the Trump administration claims the PSLF program has been abused because of the creation of the PSLF waiver process and seeks to change the eligibility criteria. The PSLF waiver was a temporary Department of Education program, launched in 2021, that allowed student loan borrowers to receive credit toward Public Service Loan Forgiveness for payments that were late, partial, or made under a non-qualifying repayment plan. The PSLF waiver program ended in 2022 and has not been replaced. The executive order does not reckon with the fact that until 2021, the PSLF program had a 99 percent rejection rate. The creation of the PSLF waiver in 2021 helped provide access to thousands of public service professionals across fields who had worked tirelessly in their careers in hopes of some relief.³ Thus, the waiver has ushered in a new era of efficacy for the PSLF program—an era where the program stands poised to actually help the public service workers that need it.

It should also be noted that the proposed PSLF regulations come at a time when Black people, low-income communities, and recent graduates are already facing a worsening economic crisis. In August, only 22,000 jobs were added to labor market, and unemployment rose to 4.3 percent,

¹ Federal Student Aid, Public Service Loan Forgiveness (PSLF) Data, U.S. DEP'T OF EDUC., <https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data>.

² Restoring Public Service Loan Forgiveness, WHITE HOUSE (Mar. 21, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/restoring-public-service-loan-forgiveness/>.

³ Ben Kaufman, The PSLF Waiver Has Been a Huge Success, and It May Be Just Hitting Its Stride. Why End It?, STUDENT BORROWER PROT. CTR. (Nov. 14, 2022), <https://protectborrowers.org/the-pslf-waiver-has-been-a-huge-success-and-it-may-be-just-hitting-its-stride-why-end-it/>.

the highest since the COVID pandemic.⁴ Black workers face the greatest hardship with the highest unemployment rate at 7.2 percent, driven by Black women losing 300,000 jobs due to mass federal layoffs.⁵ To add to the crisis, recent college graduates are also struggling with unemployment at 5.3 percent, the highest since 2015.⁶ All of this is happening as sweeping provisions in the reconciliation bill advanced by President Trump cap federal student loan borrowing, alter repayment plans, and restrict access to public benefits such as Medicaid and SNAP.⁷ Taken together, these economic pressures create a perfect storm that will harm vulnerable Black people, other racial groups, and low-income communities for years to come.

The existence of a well-functioning PSLF program under these economic conditions will be key for vulnerable communities that choose to pursue higher education and work in public service fields. Implementing these proposed regulations would strike a devastating blow to public service workers, especially Black workers, who hold a larger share of public sector jobs and are more likely to take on student debt.⁸ These regulations risk deepening existing racial and economic inequities and undermining families who rely on public service careers for both livelihood and opportunity.

II. Comments on Specific Provisions

The Department of Education has proposed the following regulations, which we believe would undermine access and the long-term success of the PSLF program. We provide the specific comments on the proposed regulations and our reasoning below:

- **Amend § 685.219(b)** to add definitions for: aiding or abetting, chemical castration or mutilation, child or children, foreign terrorist organizations, illegal discrimination, other Federal Immigration laws, substantial illegal purpose, surgical castration or mutilation, terrorism, trafficking, violating State law, and violence for the purpose of obstructing or influencing Federal Government policy.

⁴ Lydia Depillis, August Jobs Report: U.S. Economy Adds 142,000 Jobs, N.Y. TIMES (Sept. 7, 2025), <https://www.nytimes.com/live/2025/09/05/business/jobs-report-august-economy>.

⁵ Emma Ockerman, The Black Unemployment Rate Is at Its Highest Since 2021—Here's Why That's a Bad Sign for the Economy, Yahoo Finance (Sept. 5, 2025), <https://finance.yahoo.com/news/the-black-unemployment-rate-is-at-its-highest-since-2021-heres-why-thats-a-bad-sign-for-the-economy-181633389.html>.

⁶ Jaison R. Abel & Richard Deitz, The Labor Market for Recent College Graduates, FEDERAL RESERVE BANK OF NEW YORK (2025), <https://www.newyorkfed.org/research/college-labor-market#--:overview>.

⁷ Jocelyn Salguero & Michele Zampini, Provisions Affecting Higher Education in the Reconciliation Law, TICAS (Jul. 15, 2025), <https://ticas.org/affordability-2/provisions-affecting-higher-education-in-the-reconciliation-law/>.

⁸ Diego A. Briones, Nathaniel Ruby & Sarah Turner, Waivers for the Public Service Loan Forgiveness Program: Who Would Benefit from Takeup? NBER Working Paper No. 30208 (July. 2022), https://www.nber.org/system/files/working_papers/w30208/w30208.pdf#page=16.

Comment: The Department's definitions are insufficient to ensure fair implementation of this regulation. For example, the definitions for "substantial illegal purpose" and "illegal discrimination" are overly broad and ambiguous. When combined with other proposed regulatory changes, these provisions allow for unfettered discretion in determining the application of definitions. This would give the Secretary full authority to decide what constitutes an "illegal purpose," raising serious risks of arbitrary enforcement and potential violations of First Amendment rights, which has occurred in other instances of this administration's actions.⁹ Furthermore, the Secretary and her designees within the Department do not have the background or experience necessary to make legal findings in areas as disparate and unrelated to education as immigration, national security, and healthcare.

- **Amend § 685.219(g)** to clarify that a borrower may not request reconsideration of a final determination by the Secretary that the employer lost status as a qualifying employer.

Comment: Under the current regulations, borrowers can request reconsideration if their employer's PSLF-qualifying status is denied or revoked. The proposed rule removes that safeguard by making the Secretary's ruling final, in direct conflict with the Due Process protections that must be provided by every agency. This change unfairly burdens borrowers who made career decisions in good faith to serve the public, only to be penalized for an employer's loss of qualifying status, and it harms employers who rely on their employees qualifying for PSLF. It would force borrowers either to leave their jobs (in a current economic downturn) and seek new employment to preserve PSLF eligibility or to pursue costly legal action or wait for their employer to challenge this determination in court. Access to an administrative appeal or reconsideration process must remain in place to protect borrowers, and the Secretary's determination should not be absolute or beyond review.

- **Add § 685.219(h)** to establish that the Secretary would determine by the preponderance of the evidence, and after notice and opportunity to respond, that a qualifying employer has engaged on or after July 1, 2026, in activities that have a substantial illegal purpose by considering the materiality of any illegal activities or actions. Also, the Secretary will deem certain actions as conclusive evidence that the employer engaged in activities that have a substantial illegal purpose.
 - **Comment:** The Secretary and her designees within the Department do not have the background or experience necessary to make these legal findings. Courts have

⁹ Josh Moody, Judge Rules Harvard Funding Freeze Illegal, Inside Higher Ed (Sept. 3, 2025), <https://www.insidehighered.com/news/government/politics-elections/2025/09/03/judge-rules-harvard-funding-freeze-illegal>.



repeatedly enjoined ED's interpretation of recent guidance with similarly vague provisions (*See e.g., Am. Fed'n of Tchrs. v. Dep't of Educ.*, No. CV SAG-25-628, 2025 WL 2374697, at 21,23 26, 27 (D. Md. Aug. 14, 2025) (holding that guidance issued by ED regarding diversity, equity, and inclusion practices in schools were textbook viewpoint discrimination, and indicating ED's interpretations of law lack factual bases, conflict with regulations and caselaw, exceed ED's authority, and are contrary to constitutional rights). Moreover, a process already exists to remove eligibility from nonprofit organizations that are engaging in illegal activity through the Internal Revenue Service (IRS), which may carry out removal of an organization's 501(c)(3) status for illegal activity, making them ineligible for PSLF.

Add § 685.219(i) to establish that the Secretary will determine that a qualifying employer engaged in activities that have a substantial illegal purpose when (1) the Secretary receives an application in which the employer fails to certify that it did not participate in activities that have a substantial illegal purpose, or (2) the Secretary otherwise determines that the qualifying employer engaged in such activities under the standard set forth in §685.219(h).

Comment: Both additions attempt to grant unilateral authority to the Secretary to determine what constitutes “illegal purposes.” Additionally, it places the burden on employers to prove they are not engaging in such activities, without establishing what counts as proof. The rule leaves the determination of what proof is required entirely to the discretion of the Secretary, effectively giving the Department the power to decide what is “illegal” on shifting or subjective grounds. This power risks targeting organizations that may not align with the priorities of the current administration and raises concerns about fairness and neutrality in program administration. Employers should not be forced into defense against vague standards, and borrowers should not lose PSLF eligibility because of them. Nonprofits and other qualifying employers are entitled to exercise their First Amendment rights without fear that doing so could jeopardize their employees’ access to PSLF. Granting the Secretary this unchecked power would concentrate too much authority in the executive branch and undermine both due process and constitutional protections.

- **Add § 685.219(j)** to establish that an employer that loses PSLF eligibility could regain qualifying employer status after (1) 10 years from the date the Secretary determines the employer engaged in activities that have a substantial illegal purpose, or (2) after the Secretary approves a corrective action plan.

Comment: This regulation grants the Secretary unilateral authority to determine which employers may regain access to the PSLF program after being deemed to



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have engaged in activities with a “substantial illegal purpose.” Combined with other proposed provisions, this allows the Secretary both to label organizations as engaging in illegal conduct based on their own interpretation of the law and then to decide whether those same organizations may reenter the program. This level of power in the Secretary’s office creates a risk of biased decision-making.

The proposed 10-year exclusion period is also deeply problematic. The Department has provided no clear justification for selecting ten years, and such a lengthy process could devastate organizations that were wrongly disqualified or whose employees rely on PSLF eligibility. Organizations should have access to a fair and timely appeal process, and borrowers should not lose eligibility because of the sole determinations of the Secretary.

The Lawyers’ Committee is committed to ensuring that all people seeking education have access to high-quality opportunities, experiences, and outcomes. For this reason, we strongly urge the Department of Education to withdraw the proposed regulations in this NPRM. These regulations grant the Secretary of Education a level of authority that exceeds both statutory and constitutional boundaries, and they create additional barriers to access to higher education and economic mobility for public service workers. These regulations will also cause irreparable harm to Black workers, other communities of color, and low-income individuals who already face systemic inequities in the labor market and are hoping they receive some form of relief for their public service.

For any questions or for additional information, please contact Chazz Robinson, Education Policy Advisor, at crobinson@lawyerscommittee.org.

Sincerely,

Chazz Robinson

Education Policy Advisor

Lawyers’ Committee for Civil Rights Under Law