

September 17, 2025

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

Re: William D. Ford Federal Direct Loan (Direct Loan) Program Notice of Proposed Rulemaking [RIN 1801-AA28]

Dear Tamy Abernathy:

On behalf of the undersigned 64 organizations that promote and protect civil and human rights for all people in the United States and dedicate our time and resources in service of the public, we offer these comments in opposition to the Department of Education's (ED) Notice of Proposed Rulemaking (NPRM) (RIN 1801-AA28) published to the Federal Register on Monday, August 18, 2025, that would make unlawful changes to the Public Service Loan Forgiveness (PSLF) program under 34 C.F.R. § 685.219. The NPRM, if adopted, would allow the Secretary to determine an employer to be ineligible to participate in PSLF if it engages in activities that have a "substantial illegal purpose." This NPRM attempts to unlawfully expand ED's power beyond its statutory authority and grants the Secretary broad discretion to weaponize the PSLF program in order to unconstitutionally target organizations which have viewpoints that diverge from the Administration's. **We strongly urge ED to withdraw this NPRM, which seeks to punish state and local governments and non-profit organizations and would harm hundreds of thousands of borrowers in the process.**

- I. Congress established PSLF and its employer eligibility criteria, and ED has no authority to rewrite these statutory terms.

Congress established PSLF in 2007 to make a critical federal investment in organizations advancing work in the interest of the public, from local and state government employees working in education and social services to workers at advocacy groups defending civil rights. In order to provide this broad investment in public service, Congress defined eligible employers to include all local and state governments as well as all 501(c)(3) non-profits. 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 political agenda or those who disagree with its policies. This illegal power grab will not only burden hundreds of thousands of borrowers with billions of dollars in debt, but it will also hurt state and local governments, non-profit organizations, and

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communities across our nation. Those effects will be felt widely and will disproportionately harm marginalized people including Black, Brown, Indigenous, LGBTQ+, immigrant, low-income communities, and people with disabilities nationwide.

The proposed rule's insertion of ideology into the PSLF program opens the door for any administration to change program eligibility based on its preferred ideologies, something not intended by Congress. Non-profit organizations must be able to identify and meet local needs without political interference, fear of retribution, or removal from a program designed to support their employees. Without assurances that program rules will remain consistent over the long term, non-profit professionals cannot rely on the program to make important decisions about their career path.

ED has no statutory authority to redefine employer eligibility for PSLF. This NPRM subverts congressional will and intent by restricting the PSLF program and contorting it to advance an agenda that is itself adverse to the interest of the public. When Congress created the PSLF program through the College Cost Reduction and Access Act of 2007, it clearly defined what organizations are eligible to participate in the program and clearly did **not** provide the Secretary of Education with any power to restrict that definition. (College Cost Reduction and Access Act, Pub. L. No. 110-84, 121 Stat. 784, 801 (2007).) ED misrepresents its authority by stating that it is ensuring taxpayer funds do not go to organizations that violate the law. ED is ill-equipped to make such decisions, and appropriate mechanisms already exist to address such violations. The NPRM unlawfully grants the Secretary sweeping authority to make independent assessments regarding the legality of organizations' work on immigration, discrimination, healthcare, national security, and other areas totally outside the purview of the Department's expertise. That kind of discretion invites unconstitutional abuse.

II. The NPRM creates a significant risk of viewpoint discrimination in violation of the First Amendment.

The NPRM also creates a significant risk of unconstitutional viewpoint discrimination in violation of the First Amendment. In the NPRM, ED has only explicitly identified a small number of issues to target, each of which invites expansive examination of non-criminal and otherwise lawful activities. Unsurprisingly, these issues all come directly from the Administration's dangerous and harmful agenda. Under ED's proposed definition of "substantial illegal purpose," ED would be authorized to deem ineligible countless employers, including state and local governments and non-profit organizations that engage in work that the Administration disagrees with, such as helping immigrants, providing healthcare to transgender youth and adults, advancing equity in schools and workplaces

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for underrepresented students, working with groups advocating against war, offering legal assistance to institutions on matters the Administration finds controversial, or participating in peaceful protest. ED states that it only seeks to prohibit such work to the extent it is illegal, but this restriction provides cold comfort where subsection (h) of the proposed rule vests sole authority in the Secretary, and not courts, in determining whether conduct is illegal. Determinations of criminality in this context are wildly outside of the authority and expertise of the Secretary. Further, ED has demonstrated an inability or lack of desire to correctly interpret even laws within its authority and expertise. (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 was 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.)

The inclusion of "illegal discrimination" is particularly concerning because this Administration has made numerous efforts to re-interpret civil rights laws, accusing schools and organizations of unlawful activity under Title IX of the Education Amendments of 1972 (Title IX) and Title VI of the Civil Rights Act of 1964 (Title VI) without substantiation, legal support, or factual or legal explanation. Although the Administration does not have the authority to re-write federal statutes like Title VI and Title IX, and Executive Orders do not supersede the Constitution or federal law, the administration's ongoing efforts to re-interpret civil rights law by decree make it clear that inclusion of "illegal discrimination" in this NPRM is intended to target civil rights organizations that are engaged in lawful advocacy work.

III. ED is ill-equipped to implement this NPRM and doing so would have devastating consequences.

ED lacks the capacity and expertise to implement the proposed rule. Having recently fired half its staff and shuttered numerous ED offices, the Department currently has reduced capacity to do the work it is statutorily required to carry out, let alone intercede into issues and determinations far beyond its authority. Even if ED devoted already diminished staff resources to making these determinations, it has no relevant expertise to effectively carry out this proposed rule. 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. Notably, a process already exists to remove eligibility from non-profit organizations that are engaging in illegal activity. In such circumstances, the Internal Revenue Service (IRS) may carry out removal of an organization's 501(c)(3) status for illegal activity, which would make them ineligible for PSLF. Of course, this process provides appropriate safeguards for the accused

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organization, and federal law prohibits the president and other executive branch officials from directing such an audit. (26 U.S.C. § 7217.)

If allowed to proceed, this NPRM would have devastating consequences for this country and its people. ED would wield this authority as a cudgel to chill lawful activities of state and local governments and non-profit organizations. As a result, there will be a dramatic decrease in the provision of important services for marginalized communities including Black and other communities of color, LGBTQ+ youth, immigrants, people with disabilities, and low-income families. Public interest employers would face difficulties in recruiting new staff as the threat of losing student loan forgiveness looms large over the entire sector. Hundreds of thousands of borrowers will be further burdened by billions of dollars in student loan debt. Without access to PSLF many public servants—especially those in rural and underserved areas—would be unable to afford to work in public service and forced to abandon their jobs and the communities they serve for the private sector, where salaries are often higher. People rely on PSLF—an assurance made to public service workers to commit to 10 years (or more) of service while making 120 eligible student loan payments. For these public service workers to continue improving the lives of our communities, the federal government needs to invest in them and fulfill the promise that Congress made.

This program is not only essential, but effective. The program is a powerful tool for recruiting and retaining the best and brightest in public service, from educators and first responders to public defenders and medical professionals. PSLF provides pathways for those who are most interested in lifelong public service careers and supports everyone, regardless of political party affiliation or voting trends. It's a program for all public service professionals who serve a wide variety of communities. Each of the undersigned organizations, and similar organizations, stands to be negatively impacted by adoption of the NPRM. Non-profit professionals have been able to devote their careers to public service because of access to PSLF. Diminishment of access to the current program will severely weaken the pipeline of future professionals seeking to serve communities in furtherance of ensuring equity, justice, nondiscrimination, and constitutional protections. These changes are bad for communities, bad for racial justice, bad for gender justice, and bad for a society based on equality for all and the rule of law.

We strongly urge ED to immediately withdraw this unlawful NPRM in its entirety. The NPRM represents an unconstitutional and unjust attack on organizations that advance important work in the public interest as well as on the borrowers that work for them. Further, many of our country's most vulnerable will suffer as a result of adoption of the proposed rule. Ultimately, the NPRM will harm the people and communities who rely

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on non-profit organizations and the essential services they provide by making it harder to attract and retain an effective, skilled workforce.

If you have any questions or need additional information, please contact Michael Pillera, Director of the Educational Opportunities Project at the Lawyers' Committee for Civil Rights Under Law, at MPillera@lawyerscommittee.org; Alison Gill, Director of Nominations & Democracy at the National Women's Law Center, at agill@nwlc.org; or Ray Li, Policy Counsel at the Legal Defense Fund, at rli@naacpldf.org.

Sincerely,

Legal Defense Fund

Lawyers' Committee for Civil Rights Under the Law

National Women's Law Center

Center for LGBTQ Economic Advancement & Research (CLEAR)

Equality California

Silver State Equality

Oasis Legal Services

Shriver Center on Poverty Law

Chicago Women in Trades

Coalition on Human Needs

NBJC

American Humanist Association

Freedom From Religion Foundation

Women Employed

Economic Policy Institute

National Employment Law Project

American Association of University Women (AAUW)

Equal Rights Advocates

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League of United Latin American Citizens (LULAC)

National LGBTQ Task Force Action Fund

National Action Network

Movement Advancement Project

Mental Health Transformation Alliance

National LGBTQ+ Bar Association

Japanese American Citizens League

NAACP

Autistic People of Color Fund

National Disabled Legal Professionals Association

Sur Legal Collaborative

Interfaith Center on Corporate Responsibility

The Advocates for Human Rights

LatinoJustice PRLDEF

United Church of Christ

Americans United for Separation of Church and State

Feminist Majority

Clearinghouse on Women's Issues

National Association of Social Workers

Southeast Asia Resource Action Center (SEARAC)

NETWORK Lobby for Catholic Social Justice

Lawyers for Good Government

American Civil Liberties Union

EdTrust

National Association of Social Workers

Center for Law and Social Policy (CLASP)

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Reproaction

National Health Law Program

Asian Americans Advancing Justice - AAJC

Brennan Center for Justice

Houston Immigration Legal Services Collaborative

Common Cause

National Immigration Law Center (NILC)

Center for Progressive Reform

National Partnership for Women & Families

UnidosUS

Institute for Women's Policy Research

Kids in Need of Defense (KIND)

Justice in Aging

Religious Action Center of Reform Judaism

Planned Parenthood Federation of America

Institute for Sustainable Diversity & Inclusion

National Institute for Reproductive Health

William E. Morris Institute for Justice

Autistic Self Advocacy Network

New York Lawyers for the Public Interest