Submitted Electronically (www.regulations.gov)

September 17, 2025

Tamy Abernathy
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue SW, 5th Floor
Washington, DC 20202

Subject: William D. Ford Federal Direct Loan (Direct Loan) Program, Docket (ED-2025-OPE-0016)

Dear Ms. Abernathy:

LeadingAge represents more than 5,400 nonprofit aging services providers and other mission-driven organizations that touch millions of lives every day. Alongside our members and 36 partners in 41 states, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, community-based services, hospice, and home-based care including Medicare home health agencies. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home.

On behalf of these members and partners, we write to express our concerns about the Department of Education's ("Department") Notice of Proposed Rulemaking ("NPRM") to revise the Public Service Loan Forgiveness ("PSLF") Program.

BACKGROUND

Congress established the PSLF program to provide incentives for students and graduates to seek and stay in jobs with qualifying employers that are challenging, rewarding and critically needed, even if they may not pay as much as other private sector opportunities. As the Department's NPRM notes, the PSLF program is a key to attracting and retaining individuals in such jobs, with significant research showing that public service employees cite "PSLF as a significant factor in their decision to pursue and remain in public service."[1]

LeadingAge has a strong interest in the PSLF because nonprofit aging services providers rely on the program as a tool to recruit and retain skilled and compassionate employees. These issues are vitally important, given that our members are facing critical workforce shortages across the country, and at a time when our nation's need for older adult services has never been greater.

It is from this perspective that we offer comments on the Department's proposal to amend PSLF regulations (34 CFR §685.219) with a rule disqualifying certain employers in order to "prevent taxpayer-funded PSLF benefits from being improperly provided to individuals who are employed by organizations that engage in activities that have a substantial illegal purpose."[2]

[1] William D. Ford Federal Direct Loan (Direct Loan) Program, 90 Fed. Reg. 40154, 40169 (Aug. 18, 2025)
[2] NPRM 90 Fed. Reg. 40154

SPECIFIC COMMENTS

1) The proposed rule is contrary to the statute that created the program.

On March 7, 2025, President Trump issued an Executive Order[3] directing the Secretary of Education to propose revisions to PSLF regulations that ensure the definition of "public service" excludes organizations that engage in activities that have a substantial illegal purpose.

The program's authorizing statute, however, is straightforward. It states: "[T]he Secretary shall cancel the balance of interest and principle due…on any eligible Federal Direct Loan not in default for a borrower who – (B)(i) is employed in a public service job at the time of such forgiveness; and (ii) has been employed in a public service job during the period in which the borrower makes each of the 120 payments"[4]; and the statute's definition of "public service job" expressly includes jobs at "an organization that is described in section 501(c)(3) of title 26 [Internal Revenue Code] and exempt from taxation under section 501(a) of such title," without exception.[5]

We therefore respectfully suggest that the Department does not have the authority to define a qualifying employer in a way that would restrict or exclude certain 501(c)(3) organizations based on departmental determinations about the legality of those organizations' activities and purposes.

2) A process is already in place to remove eligibility from organizations that engage in illegal activity.

The authority of the Internal Revenue Service ("IRS") to oversee nonprofit organizations' compliance with the requirements of 501(c)(3) status already provides a tool to address concerns that underlie this proposed rule. Under established procedures, the IRS may examine and propose the revocation of the tax-exempt status of a nonprofit that is engaging in illegal activity. If an organization loses its tax-exempt status, it will not qualify as a PSLF-eligible employer under the statute quoted above. These existing procedures ensure that nonprofits engaged in illegal activity can already be excluded from the PSLF program, without the need for the Department to create a parallel investigation and enforcement mechanism.

Furthermore, the definitions of "substantial illegal purpose" and of the activities listed within that definition will require the Department to engage in fact-finding and the drawing of legal conclusions that we believe is outside of its jurisdiction and area of expertise. For example, the Department would determine if an employer has aided or abetted violations of federal immigration law, supported terrorism, engaged in a pattern of aiding and abetting illegal discrimination violating state laws.[6]

In short, we believe the proposed rule is unnecessary given IRS authority and that creation of the separate system the proposal contemplates will result in additional burden and confusion for employers and borrowers alike, which may undermine the purpose and promise of the PSLF program. Employers may hesitate to certify compliance in the way a final rule would require, based on uncertainty about the meaning of key regulatory language and how the Department will apply it; and borrowers may hesitate to seek or to remain in employment with certain organizations, out of uncertainty about whether those employers may suddenly be disqualified under the program.

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[3] Executive Order 14235 Restoring Public Service Loan Forgiveness (90 FR 11885)

[4] 20 U.S.C. § 1087e(m)(1)

[5] 20 U.S.C. § 1087e(m)(3)(B)(i); see also 34 CFR 685.219(b) (defining "qualifying employer")

[6] NPRM 90 Fed. Reg. 40154 (proposed definition or "substantial illegal purpose")

LeadingAge agrees that appropriate oversight of the nonprofit sector is essential. If further action is needed to prevent illegal activity, however, we believe the IRS should lead those efforts, as the agency Congress has charged with oversight of tax-exempt organizations.

3) The proposed rule does not offer adequate due process for employers.

We are also concerned that there does not appear to be a mechanism for an employer to appeal after the Secretary determines that the employer is not "qualified" under the PSLF program. Prior to losing status as a qualified employer, the Department would notify the employer of an initiated action to determine if the employer engaged in activities that have a substantial illegal purpose. The NPRM states that "[t]his is the Department's attempt to outline the benchmarks that will be used in the determination and offer due process to a qualifying employer" and further explains as follows: If the employer chooses not to respond, then the Secretary may move forward with revoking qualified employer status, thus subsequent payments made by a borrower would no longer be counted towards PSLF unless certain conditions were met; and if the employer chooses to respond, the Secretary will decide on the qualified employer's status after the response has been submitted and reviewed by Department staff. Based on the response, the Secretary may choose to maintain or revoke the employer's qualifying status, using a preponderance of the evidence standard. [7] In summary, it appears an employer would have an opportunity to respond to a notice that departmental review is underway, but not to appeal the Department's ultimate determination to an independent authority, which we believe is unreasonable.

In contrast, for example, if the IRS were to make an adverse determination on tax-exempt status, the affected organization would have opportunities to appeal. An organization can protest a proposed adverse determination through an independent appeals office within the IRS. If that is not successful and the IRS issues a final determination letter denying tax-exempt status, the organization can petition the Tax Court, the U.S. Court of Federal Claims, or the U.S. District Court for the District of Columbia for a declaratory judgment.[8]

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For the reasons set forth above, we urge the Department to preserve the clear statutory standard that all 501(c)(3) organizations are PSLF-eligible employers. Adding new and potentially subjective restrictions may undermine the goals the program is meant to support, to the detriment of participating borrowers, employers, and the individuals and communities they serve.

Sincerely,

Jonathan Lips

Jonathan Lips, Vice President Legal Affairs

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[7] NPRM 90 Fed. Reg. 40163

[8] See IRS Publication 892 (Rev. 2-2017)