



September 12, 2025

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

Re: William D. Ford Federal Direct Loan (Direct Loan) Program Notice of Proposed Rulemaking (Docket ID ED-2025-OPE-0016)

Dear Ms. Abernathy,

The North Carolina Center for Nonprofits (the Center) welcomes this opportunity to submit formal comments on the Department of Education's (Department) Notice of Proposed Rulemaking on Public Service Loan Forgiveness (PSLF) Docket ID ED-2025-OPE-0016, published on August 18, 2025. The Center is a 501(c)(3) nonprofit that connects, educates, and advocates for charitable nonprofits throughout North Carolina. Many of the Center's 1,200 member nonprofit organizations could be affected by the Proposed Rule making changes to employer eligibility requirements for PSLF.

Importance of PSLF to charitable nonprofits, their employees, and North Carolina communities

Charitable nonprofits provide about 324,000 jobs in North Carolina, which accounts for about 8% of the state's private sector workforce. Nonprofit jobs often provide slightly lower compensation than comparable jobs in the for-profit sector, creating challenges for nonprofits in recruiting and retaining high quality employees. PSLF has helped nonprofits with job recruitment and job retention by creating a financial incentive for young professionals with student debt to consider public service jobs – including positions with charitable nonprofits – and to continue working in those jobs for 10 years while paying off their student loans. Because of this reality, PSLF has enabled many nonprofits to maintain high quality and stable workforces, which in turn helps these organizations to provide a wide range of services efficiently and effectively to communities across North Carolina.

The Center has had multiple staff who have benefited from PSLF, and many of the Center's members have employees who have received loan forgiveness through PSLF or who are actively earning loan forgiveness under the PSLF program. As a result of PSLF, nonprofit employees in North Carolina have reported that they have been able to purchase their first homes, afford child care, and improve their credit scores, which in turn helps strengthen our state's economy.

Statutory definition of "public service job" includes all full-time positions with 501(c)(3) nonprofits

The statute authorizing PSLF provides for student loan forgiveness for any borrower who: (A) has made 120 eligible monthly payments on their federal student loans; and "(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 described in subparagraph (A).”¹ The statutory definition of “public service job” includes “a full-time job . . . at an organization that is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title.”² Neither this definition nor any other part of the authorizing statute for PSLF includes any limitation on the types of 501(c)(3) organizations that are qualifying employers for purposes of PSLF nor do they direct the Department to develop regulations that would limit the statutory definition of “public service job.” Instead, the statute makes clear that *all* 501(c)(3) public charities are qualifying employers for purpose of PSLF.

Recent legislation filed in Congress appears to confirm that the current statute authorizing PSLF does not allow for exclusion of employers as PSLF qualifying employers because they are engaged in the types of “substantial illegal activities” described in the Proposed Rule. During the 119th Congress, bills have been filed in both the U.S. Senate (S. 1845) and U.S. House of Representatives (H.R. 3739) that would amend the current statute to add an exclusion from the definition of “public service job” that are virtually identical to the exclusions in the Proposed Rule. The filing of this legislation strongly suggests that the current statute does not allow for broad exclusions for employers engaged in “substantial illegal activities” that are included in the Proposed Rule.

The Center offers two recommendations based on the statutory definition of “public service job”:

- **RECOMMENDATION:** For consistency with the current statute, no limitation should be placed on the types of 501(c)(3) organizations that qualify for the purposes of PSLF; however, if any limitation must be placed, then those limitations should be extremely limited and narrow.
- **RECOMMENDATION:** If the Department of Education believes that the current statute authorizing PSLF does not provide adequate exclusions for 501(c)(3) organizations engaged in “substantial illegal purposes,” the Department could consider working with Congress to amend the statute to add these exclusions in 20 U.S. Code § 1087e(m)(3) rather than by inserting the limitation through regulation.

Narrow applicability of the illegality doctrine should be reflected in any final rule

The Proposed Rule explains that the proposed exclusions from the definition of “qualifying employer” for organizations engaged in “substantial illegal purposes” are intended to align with the Internal Revenue Service’s (IRS) illegality doctrine, under which the IRS may deny an organization’s application for 501(c)(3) status or revoke an organization’s tax-exempt status if the organization engaged in substantial illegal activities. The IRS has developed a three-part test to determine whether an organization’s purpose is permissible under Internal Revenue Code Section 501(c)(3), the second of which is essentially a statement of the illegality doctrine: “the activities are not illegal, contrary to a clearly defined and established public policy, or in conflict with express statutory restrictions.”³ This

¹ 20 U.S.Code § 1087e(m)(1)(B).

² 20 U.S.Code § 1087e(m)(3)(B)(i).

³ Rev. Ruling 80-278, 1980-2 C.B. 175.

description of the illegality doctrine suggests that the scope of the illegality doctrine is narrow, covering activities that are:

- (a) in direct violation of express statutory language (not merely an executive branch agency's interpretation of a statute); or
- (b) "clearly defined and established" public policy, which suggests that only activities that violate clearly defined, widely accepted, and longstanding public policy positions (not merely recent interpretations of a statute) would be subject to the illegality doctrine if they are not explicit statutory violations.

As the Congressional Research Service (CRS) noted in a publication cited in the Proposed Rule, "the reach of the illegality doctrine is uncertain due to limited illegality doctrine jurisprudence and IRS materials delineating the types and level of illegal activities that could constitute grounds for denial of 501(c)(3) status."⁴ The CRS publication concludes by suggesting that Congress – not regulatory agencies – may want to consider providing greater clarity by "codifying the illegality doctrine and demarcating the doctrine's limits."

As the Proposed Rule notes, the IRS already enforces the illegality doctrine by denying or revoking 501(c)(3) status to organizations that it deems to have violated the doctrine. This IRS enforcement, coupled by the express language of the statute authorizing PSLF (as noted above) establishing all 501(c)(3) tax-exempt organizations as qualifying employers, suggests that the illegality doctrine is already being applied to 501(c)(3) nonprofits for the purpose of eligibility as qualifying employers for PSLF.

The Center offers the following recommendations to help ensure that any final rule for exclusions of 501(c)(3) organizations from PSLF eligibility because of engagement in "substantial illegal purposes" is aligned with the illegality doctrine as currently enforced by the IRS:

- **RECOMMENDATION:** The final rule should ensure that any definitions of illegal activities that could be disqualifying activities for qualifying organizations under PSLF are narrowly defined and represent clear violations of express federal or state statutory language or are contrary to clearly defined, widely accepted, and longstanding public policy positions.
- **RECOMMENDATION:** The final rule should ensure that any types of illegal activities defined in the final rule are among those that have been identified in the application of the illegality doctrine by the IRS or through federal courts.
- **RECOMMENDATION:** The final rule could simply provide that any 501(c)(3) organization ceases to be a qualifying employer for the purpose of PSLF if the Internal Revenue Service revokes its tax-exempt status because of engagement in activities that constitute substantial illegal purposes.

⁴ The Illegality Doctrine and 501(c)(3) Organizations (2025), <https://www.congress.gov/crs-product/IF12739>.

Standard for determining engagement in “substantial illegal purposes”

The Center appreciates that the Proposed Rule provides a rationale for the proposed standard that the Department would use in determining that an organization has engaged in “substantial illegal purposes.” Specifically, we appreciate that proposed 34 CFR § 685.29(h)(1) requires the Secretary to consider the “materiality of any illegal activities or actions” since this appears to align with the qualitative standards and quantitative standards that the IRS applies in its consideration of the illegality doctrine.⁵ The Center offers the following recommendations about the standard for determination that an organization has engaged in activities that constitute “substantial illegal purposes”:

- **RECOMMENDATION:** The final rule should add a definition of “materiality” to ensure that the Secretary’s application of the illegality doctrine is aligned with the IRS’s analysis of the qualitative and quantitative standards for the illegality doctrine as described in IRS G.C.M. 34631.
- **RECOMMENDATION:** The final rule should revise 34 CFR § 685.29(h)(1) to require a final court judgment, a guilty or *nolo contendere* plea, or a settlement with an admission of engagement in substantial illegal purposes as a prerequisite to the Secretary finding that an organization is not a qualifying employer for purposes of PSLF rather than simply as conclusive evidence.

Applicable date for engagement in “substantial illegal purposes”

We appreciate that the Proposed Rule would not apply retroactively for engagement in past “substantial illegal purposes” but instead would apply to engagement in substantial illegal purposes on or after July 1, 2026. This should help provide the opportunity for organizations that are currently qualifying employers for purposes of PSLF to assess whether they may be engaged in “substantial illegal purposes” and to take corrective action to ensure that they are no longer engaged in these activities by July 1, 2026 so that their employees remain eligible for PSLF. The Center offers the following recommendation:

- **RECOMMENDATION:** Regardless of other changes that may be made, the final rule should maintain the July 1, 2026 effective date for applicable engagement in substantial illegal purposes in proposed 34 CFR § 685.29(h)(1) and should consider making the effective date later if a final rule is published after January 1, 2026.

Certification that organizations did not engage in activities with substantial illegal purposes

The proposed 34 CFR § 685.29(i)(1)(i) implies that the future application for employers to be qualifying employers under PSLF will include a certification that an employer “did not participate in activities that have a substantial illegal purpose” and that any nonprofits that fail to provide this certification will not be qualifying employers for purposes of PSLF. This certification process could cause some nonprofits to lose their status as qualifying employers for purposes of PSLF either because they were unaware of the new certification requirement or because they were uncomfortable certifying that they did not participate in activities with a substantial illegal purpose if the definitions of such activities are unclear or ambiguous.

⁵ IRS General Counsel Memorandum 34631 (October 4, 1971).

- **RECOMMENDATION:** The final rule should consider removing the implied certification requirement from 34 CFR § 685.29(i)(1)(i).

Shared EINs by operationally distinct organizations

We appreciate that the proposed 34 CFR § 685.29(i)(2) allows for distinct treatment of separate employers operating under the same employer identification number (EIN). While the discussion of this provision in the Proposed Rule focuses on city government employers, there are situations where it may also be applicable to certain 501(c)(3) nonprofits, including programs that are operated through fiscal sponsorship arrangements with 501(c)(3) organizations. The Center offers the following recommendation:

- **RECOMMENDATION:** The final rule should maintain the current language in proposed 34 CFR § 685.29(i)(2) and should possibly include discussion noting that this provision may apply to 501(c)(3) nonprofits as well as to governmental employers.

Conclusion

Many nonprofit employees rely on PSLF as part of their long-term financial planning. Any limitations to the definition of qualifying employers for the purposes of PSLF that are inconsistent with the authorizing statute, are overbroad, and/or are unclear could create uncertainty for 501(c)(3) nonprofits and their employees that could undermine the many ways that PSLF currently PSLF benefits nonprofit organizations, their employees, their communities, and our economy. We encourage the Department of Education to consider the Center's recommendations as it develops a final rule to help ensure that PSLF continues to operate in a way that helps nonprofits and their employees strengthen their communities and the economy.

Thank you for the opportunity to submit these comments on behalf of North Carolina's nonprofit sector.

Respectfully submitted,



David R. Heinen
Vice President for Public Policy and Advocacy
North Carolina Center for Nonprofits