



September 12, 2025

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

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

Dear Ms. Abernathy,

Independent Sector appreciates the opportunity to share comments on the above-referenced proposed rule regarding revisions to the Public Service Loan Forgiveness (“PSLF”) Program. We are a national membership organization of nonprofits, foundations, and corporate giving programs, and our diverse members range from some of the largest charities in the world to all-volunteer organizations, and from major global philanthropies to small foundations, academic centers, and more. Our core aim is to support these organizations and all civil society, working toward a healthy and equitable nonprofit sector to ensure all people living in the United States thrive.

The nonprofit sector plays an irreplaceable role in delivering vital community services, particularly to populations who are disproportionately at risk – low-income families, people with disabilities, seniors, and communities of color. Independent Sector is deeply concerned that the proposed rule will not only affect employees but will also undermine nonprofits’ ability to sustain services for these groups. In practice, this means fewer healthcare workers at nonprofit hospitals, fewer caseworkers at social service agencies, and fewer teachers and staff at community-based nonprofits – all at a time when demand for services is rising. We request that you consider these comments, based on consultation with our member organizations and others in the charitable and philanthropic community, as you finalize this proposal.

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**Dr. Akilah Watkins**  
Independent Sector

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The Honorable  
**John W. Gardner (1912-2002)**  
Founding Chair

**Brian O’Connell (1930-2011)**  
Founding President and President Emeritus

## **I. Importance of the Nonprofit Sector**

In considering the proposed rule’s impact on the nonprofit sector, the Department must begin with some consideration of the sector’s importance. Nonprofit organizations have been the backbone of civil society throughout the nation’s history. They have helped foster our democracy and serve as an essential and trusted partner to government at all levels. Every day, nonprofit organizations work to meet community needs, providing housing, health care, nutrition, workforce development, education, disaster relief, cultural inspiration, spiritual guidance, environmental conservation, and any number of other vital services. Many nonprofits fill key gaps in the social safety net, helping both people living in poverty and those who live below the ALICE<sup>1</sup> Threshold of Financial Survival – the cost of household essentials (housing, childcare, food, transportation, health care, and technology, plus taxes) in their county of residence – but who earn above the federal poverty level, and do not qualify for traditional public assistance.<sup>2</sup>

While these organizations exist to serve a charitable purpose, the sheer magnitude of their work constitutes a vital part of our economy. Approximately 10% of the private workforce in the U.S. – approximately 13 million paid workers – is employed by a nonprofit organization. Nonprofits pay \$870 billion annually in wages, supporting families in communities across America. In 2023, nonprofits comprised 5.2% of GDP and contributed \$1.4 trillion to the economy.<sup>3</sup>

## **II. Importance of PSLF to the Nonprofit Sector**

The PSLF Program was created by Congress in 2007 to incentivize students to “take on some of the most needed and challenging – but not the most lucrative – professions.”<sup>4</sup> Given the high cost of living and wages that often lag behind those offered by for-profit employers, the PSLF Program is essential to the nonprofit sector’s ability to recruit and retain a skilled, mission-driven workforce. Recent research by Independent Sector and United for ALICE shows that in 2022, 22% of nonprofit workers lived in households with income below the ALICE Threshold.<sup>5</sup> Thus, charitable organizations – including nonprofit hospitals, health centers, social service providers, and other community-based organizations – depend on PSLF as a talent pipeline. The program helps employees get by with lower wages because they can reasonably expect long-term relief from their educational debt.

The Department’s Notice of Proposed Rulemaking (NPRM) acknowledges that the PSLF Program has been a “key factor in attracting and retaining individuals in public service.”<sup>6</sup> The Department refers to “significant research, both academic and private sector, which documents that public service employees cited PSLF as a significant factor in their decision to pursue and remain in public service.”<sup>7</sup> The NPRM includes a 2025 survey

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<sup>1</sup> Asset Limited, Income Constrained, Employed. *ALICE in the Nonprofit Workforce: A Study of Financial Hardship* (Independent Sector and United For ALICE, Sep. 2024) at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Health of the U.S. Nonprofit Sector, Annual Review* (Independent Sector, Dec. 2024) at 4.

<sup>4</sup> 153 Cong. Rec. H. 10,259 (daily ed. Sep. 7, 2007) (Statement of Rep. Jim Langevin).

<sup>5</sup> *ALICE in the Nonprofit Workforce* at 6.

<sup>6</sup> *William D. Ford Federal Direct Loan (Direct Loan) Program*, 90 Fed. Reg. 40,154, 40,169 (Aug. 18, 2025) (“PSLF NPRM”).

<sup>7</sup> *Id.*

by Mission Square Research Institute that found that “56% of public sector employees and 62% of private sector employees may [*sic*] job decisions based on their student loan debt levels.”<sup>8</sup>

### III. Assessment of the Proposed Rule

Against this backdrop, the Department proposes a rule that will disqualify certain employers 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.”<sup>9</sup> But rather than protecting public funds from misuse, the proposed rule will use taxpayer money to implement a duplicative and confusing process that will ultimately harm nonprofit employers, employees, and the communities they serve. Moreover, many of the proposals are outside the scope of the Department’s authority and violate borrowers’ due process rights.

#### *a. The Department of Education Lacks Statutory Authority to Exclude Borrowers Employed by 501(c)(3) Organizations from the PSLF Program*

First and foremost, the Department does not have statutory authority to exclude 501(c)(3) organizations from the PSLF Program. In creating the PSLF Program, Congress gave the Department a clear direction: “the 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.”<sup>10</sup> Within the statute, Congress defined “public service job” as a full-time job in one of a number of enumerated types of employment, “or at an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.”<sup>11</sup>

The Department promulgated the term “public service organization” “to include certain non-profit organizations *that are not qualified under 501(c)(3) of the IRC*, but that meet the other statutory requirements and qualify as public service employers under the [Higher Education Act of 1965].”<sup>12</sup> In other words, the Department started from the statutory mandate that 501(c)(3) organizations qualify as employers for the purposes of the PSLF Program and over time has promulgated regulations to *expand* the scope of qualifying employers. The Department does not have, and has never had, the authority to exclude 501(c)(3) organizations from the PSLF Program.<sup>13</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> PSLF NPRM, 90 Fed. Reg. at 40,154.

<sup>10</sup> 20 U.S.C. § 1087e(m)(1) (emphasis added). The PSLF Program was established by amending section 455(m) of the Higher Education Act of 1965, as amended, which is codified at 20 U.S.C. § 1087e(m). This comment cites to the U.S. Code throughout.

<sup>11</sup> *Id.* at 1087e(m)(3)(B)(i).

<sup>12</sup> Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 73 Fed. Reg. 37,694, 37,705 (July 1, 2008) (emphasis added).

<sup>13</sup> Although the PSLF NPRM points to two prior substantive revisions to the regulatory definition of “public service organization” as evidence of the Secretary’s “broad authority” to engage in rulemaking on this topic, 90 Fed. Reg. at 40,156, one of these revisions *expanded* the scope of the term to include 501(c)(3) organizations engaged in religious activities, which had previously been excluded. 85 Fed. Reg. 49,798, 49,805 (Aug. 14, 2020). The other revision applied only to employers *other* than 501(c)(3) organizations. 87 Fed. Reg. 65,904, 65,971 (Nov. 1, 2022).

*b. The IRS's "Illegal Purpose" Doctrine Already Provides a Process to Strip Tax Exempt Status and PSLF Eligibility from 501(c)(3) Organizations that Engage in Illegal Activity*

The Department's proposed rule to exclude certain nonprofit employers from PSLF eligibility based on "substantial illegal purpose" is unnecessary and duplicative. There already exists a robust mechanism to address this concern: the Internal Revenue Service (IRS) oversees nonprofit organizations' compliance with the requirements of 501(c)(3) status.<sup>14</sup>

Under the "illegal purpose" doctrine, the IRS has the authority and tools to revoke the tax-exempt status of any nonprofit found to be engaging in illegal activity. Once an organization loses its 501(c)(3) status, it automatically ceases to qualify as a PSLF-eligible employer. This existing system ensures that nonprofits engaged in unlawful conduct are already excluded from the PSLF Program, without the need for the Department to create a parallel enforcement regime.

In short, the proposed rule is unnecessary. Rather than duplicating the IRS's well-established oversight role, the Department should rely on the existing framework to grant, deny, or remove 501(c)(3) status, which Congress already has tied explicitly to PSLF eligibility. Independent Sector agrees that appropriate oversight is critical to a healthy, trusted nonprofit sector. To the extent that additional efforts are needed to prevent illegal activity in the nonprofit sector, however, such efforts should come from the Internal Revenue Service, as the agency specifically tasked by Congress with oversight of tax-exempt organizations. Creating a new, separate process within the Department of Education will result in conflicting standards, increased administrative burden, inconsistent enforcement, and significant uncertainty for nonprofit employers and their employees who rely on the program to plan their careers.

*c. The Proposed Rule Will Destabilize the Nonprofit Sector by Creating Confusion for Employers and Borrowers*

Even if the Department had the statutory authority to interpret "public service job" to exclude certain 501(c)(3) organizations, the proposed rule relies on a patchwork of inconsistent legal standards which will cause significant confusion for employers and borrowers.

The proposed definitions of "substantial illegal purpose" and the component activities that would constitute a "substantial illegal purpose" will require the Department to engage not only in fact-finding, but in rendering legal conclusions outside of its jurisdiction or area of expertise. For example, the Department will take it upon itself to adjudicate whether an employer has "aided or abetted" violations of Federal immigration law or has engaged in a "pattern of aiding and abetting illegal discrimination;" or whether an employer has violated State law. The Department acknowledges that this will result in inconsistent treatment of employers engaged in the same activity, noting in the context of gender-affirming care that "the Department would not find a violation of the standard [] if there is not a Federal or State law that prohibits sex transition treatments for minors in the state where the employer is located."<sup>15</sup> This simply is not authority that Congress has delegated to the Department.

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<sup>14</sup> Milan Ball, Cong. Research Serv., IF12739, *The Illegality Doctrine and 501(c)(3) Organizations* (2025).

<sup>15</sup> PSLF NPRM, 90 Fed. Reg. at 40,161.

*d. The Proposed Rule Will Destabilize the Nonprofit Sector by Placing Significant Risk on Borrowers While Removing Their Due Process Rights*

The proposed rule does not provide any means for borrowers to challenge the Secretary’s disqualification of an employer under the rule. The Department defends this on the grounds that it is “the employer, not the borrower . . . that has not met the eligibility requirements for the PSLF Program.”<sup>16</sup> But the PSLF Program bestows an entitlement on *borrowers* who meet the statutory requirements. In describing the application of procedural due process to a property interest in a benefit, the Supreme Court has stated that “[i]t is a purpose of the ancient institution of property to protect those claims *upon which people rely in their daily lives*, reliance that must not be arbitrarily undermined.”<sup>17</sup> The PSLF Program is a textbook example of such reliance: it was designed specifically to incentivize borrowers to make employment choices that affect their daily lives by foregoing potentially more lucrative or desirable opportunities in exchange for a promise to forgive their student debt. Thus, a borrower is entitled to due process before the Department determines that they are not eligible for loan forgiveness. The proposed rule does not provide any such process.<sup>18</sup>

Further, there is no mechanism in the proposed rule for either the borrower or the employer to appeal after the Secretary determines that the employer is not qualified under the proposed rules. By contrast, where the IRS denies 501(c)(3) status based on an organization having engaged in illegal activities (or for any other reason), the affected organization has several opportunities to appeal. An organization can protest a proposed adverse determination through the Appeals Office. 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; if the court rules in the organization’s favor, the IRS is bound by the court’s decision.<sup>19</sup>

Although the Department suggests that borrowers whose employers are deemed ineligible under the proposed rules would “retain the ability to pursue PSLF through eligible employment elsewhere, thereby preserving the program’s incentive structure,”<sup>20</sup> obtaining new employment is not an easy task. This may be particularly the case for borrowers who work in public service in rural or underserved areas where there are a limited number of eligible organizations providing services. Borrowers must take on the risk of their loan forgiveness being delayed by months or even years if an employer is disqualified, delay which could cost them tens of thousands of dollars – money which many nonprofit employees cannot afford to lose.

#### **IV. The Proposed Rule Will Harm the Nonprofit Sector and the Communities It Serves**

The data upon which the Department relies highlight the detrimental impact of the proposed rule on the nonprofit sector. The Department notes that compliance with the proposed rule will require employers to

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<sup>16</sup> *Id.* at 40,163.

<sup>17</sup> *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (emphasis added).

<sup>18</sup> Nor is it sufficient that the employer has an opportunity to respond before the Secretary determines that the employer has engaged in activities that have a substantial illegal purpose. The requirement that employers certify compliance with the proposed rule may put the employer’s interest at odds with the borrower’s. Given the considerable confusion around what conduct could result in disqualification, employers may be reluctant to self-certify or to respond to a notice from the Department for fear of violating the False Claims Act or incriminating themselves.

<sup>19</sup> Rev. Proc. 2013-9, 2013-1 C.B. 255.

<sup>20</sup> PSLF NPRM, 90 Fed. Reg. at 40,155.

“review[] their activities to ensure they are not engaged in any actions that would disqualify them from participating in the PSLF program.”<sup>21</sup> The Department acknowledges that “for many employers, especially smaller organizations or those with limited resources, this process may necessitate consultations with legal counsel, operational adjustments, and revisions to their hiring practices,” all of which will cost employers.<sup>22</sup> The NPRM cites to a 2021 survey by the National Council of Nonprofits finding that “a significant percentage of nonprofit organizations may face challenges in meeting changing eligibility standards.”<sup>23</sup>

The Department identifies the service areas that could be most affected by the proposed rule as including “social work, healthcare, K-12 education, and higher education.”<sup>24</sup> Independent Sector’s research in *ALICE in the Nonprofit Workforce* shows that the percentage of employees below the ALICE Threshold in these service areas is as follows: Social Assistance – 32%; Healthcare – 16%; Educational Services (including both K-12 education and higher education) – 18%.<sup>25</sup> Nonprofit sector employees – especially those in these service areas – cannot afford the destabilization that the proposed rule will cause.

Should the Department adopt the proposed rule, the end result is predictable: many employers will not certify applications for fear of subjecting themselves to criminal sanctions, even when they have not engaged in criminal activity, and many other employers will avoid engaging in lawful, mission-driven work out of fear that such work will be used to label them as law-breakers and to disqualify them from the PSLF Program. Borrowers will not apply for jobs with nonprofits, for fear that employers will be suddenly and arbitrarily disqualified from the PSLF Program. Nonprofits – especially those in states with hostile legal environments – will have a difficult time finding employees. And, ultimately, everyday people living in the U.S. will suffer when nonprofits are unable to provide or maintain the necessary level of services due to staff shortages and increasing demands.

For these reasons, we strongly urge the Department to preserve the clear statutory standard that all 501(c)(3) organizations are PSLF-eligible employers. Adding new and subjective restrictions threatens the very workforce pipeline that the PSLF Program was designed to support, to the detriment of both employees and the communities they serve.

Sincerely,  
Dr. Akilah Watkins  
President and CEO  
Independent Sector

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<sup>21</sup> *Id.* at 40,168.

<sup>22</sup> *Id.* at 40,168.

<sup>23</sup> *Id.* (citing *Nonprofit Workforce Shortages: A Crisis That Affects Everyone* (National Council of Nonprofits, March 2023)).

<sup>24</sup> PSLF NPRM, 90 Fed. Reg. at 40,170.

<sup>25</sup> *ALICE in the Nonprofit Workforce* at 32.