THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MURIEL GOODE-TRUFANT
Corporation Counsel

Phone: (212) 356-0800
Fax: (212) 356-0809
mgoodetr@law.nyc.gov

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RE: Public Service Loan Forgiveness Program Notice of Proposed Rulemaking, Docket ID ED-2025-OPE-0016

The City of New York (the City) submits this comment on the above-referenced Notice of proposed rulemaking on the Public Service Loan Forgiveness (PSLF) program issued by the U.S. Department of Education (ED). The PSLF program is a crucial resource for borrowers and directly supports the ability of our and other municipal governments to recruit and retain public sector workers, from police officers and firefighters, to health care and sanitation workers. This proposed rule would destabilize our public service workforce by creating administrative ambiguity, removing incentives for highly-qualified candidates to choose public sector roles, potentially increasing avoidable student loan debt among public servants, and discouraging young people from pursuing degrees, technical education or other career paths leading to public service. Accordingly, the City strongly urges ED to withdraw the proposed rule.

I. Background

The College Cost Reduction and Access Act of 2007, which established the PSLF program, provides that outstanding federal student loans of borrowers with a public service job will be forgiven after ten years of qualifying payments. The statute prescribes, without exception, the eligible public service jobs, namely, jobs in government and 501(c)(3) nonprofit organizations, and certain other nonprofit organizations.[1] Under governing regulations, these public service jobs are provided by a "qualifying employer."[2]

The proposed rule seeks to confer on the ED Secretary the ability to exclude employers, who have otherwise already been identified by Congress as eligible, from the PSLF program. Under the proposed rule, any employer that fails to certify that it does not engage in "activities that have a substantial illegal purpose"—or is determined by the ED Secretary to have engaged in such activities—would be subject to removal as a qualifying employer under the PSLF program. "Substantial illegal purpose" is in turn defined in the proposed rule as:

(i) aiding or abetting violations of 8 U.S.C. 1325 or other Federal immigration laws;

(ii) supporting terrorism, including by facilitating funding to, or the operations of, cartels designated as Foreign Terrorist Organizations consistent with 8 U.S.C. 1189, or by engaging in

[1] U.S. Congress, House, *College Cost Reduction and Access Act,* H.R.2669, 110th (2007-2008). https://www.congress.gov/bill/110th-congress/house-bill/2669.

[2] 34 CFR § 685.219.

violence for the purpose of obstructing or influencing Federal Government policy;

(iii) engaging in the chemical and surgical castration or mutilation of children in violation of Federal or State law;

(iv) engaging in the trafficking of children to states for purposes of emancipation from their lawful parents in violation of Federal or State law;

(v) engaging in a pattern of aiding and abetting illegal discrimination; or

(vi) engaging in a pattern of violating State laws as defined in paragraph (34) of this subsection.[3]

The proposed rule further provides that an employer which the ED Secretary has determined to be ineligible may regain eligibility either in 10 years, or possibly sooner if the Secretary, in his or her discretion, approves a corrective action plan signed by the employer that includes the following: a certification that the employer is no longer engaging in such activities, a description of the employer's controls to prevent future engagement in such activities, and "any other terms or conditions imposed by the ED Secretary designed to ensure that employers do not engage in actions or activities that have a substantial illegal purpose."[4]

II. Impact of the Proposed Rule on the City of New York

As of March of 2025, nearly one in seven New Yorkers had student loan debt, with an average balance of $41,000.[5] According to a 2021 survey, about half of student loan holders in the City indicated that student loan debt had delayed or prevented them from making at least one major life choice like saving for retirement or purchasing a home.[6] However, the PSLF program has provided borrowers with a critical avenue for loan reduction and relief. The City's Financial Empowerment Centers report that 70% of clients with successful loan reductions are enrolled in income-driven repayment plans under the PSLF program, with an average reduction of $94,600.

New York City employs one of the largest municipal workforces in the United States, with over 300,000 full-time employees and a total headcount of approximately 328,000 across full-time and full-time equivalent positions.[7] The PSLF program offers the City and our nonprofit partners

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[3] William D. Ford Federal Direct Loan (Direct Loan) Program, Notice of proposed rulemaking, 90 Fed. Reg. 157, 40175 (August 18, 2025).

[4] *Id.* at 40176.

[5] New York City Comptroller, Student Loans and the High Cost of Higher Education, June 12, 2025, *available at* https://comptroller.nyc.gov/reports/student-loans-and-the-high-cost-of-higher-education/.

[6] New York City Department of Consumer and Worker Protection, Weighed Down: How Student Loan Debt Is Affecting Their Lives, City of New York, 2021. Accessed August 27, 2025. https://www.nyc.gov/assets/dca/downloads/pdf/partners/StudentLoanDebtSurvey-Report-2021.pdf.

[7] City of New York, Mayor's Office of Management and Budget, *Full-Time and Full-Time*

a critical incentive for recruiting and retaining skilled professionals for whom a career in public service would otherwise be a financial impossibility.

Proposed changes to the PSLF program risk discouraging students from pursuing public service careers in fields like teaching, nursing, social work and medicine. This could reduce enrollment at the City's higher education institutions, weaken the pipeline of skilled graduates, and make it harder for local agencies and nonprofits to recruit qualified talent.

If eligibility for PSLF were lost or significantly reduced, it could have far-reaching consequences for not only the city workers it affects, but New Yorkers at large. The City could face greater difficulty filling critical positions that directly affect the quality of life for millions of New Yorkers. Higher turnover and recruitment challenges could lead to increased costs for training and hiring and diminished institutional expertise.

The proposed rule also introduces uncertainty for agencies and employees engaged with the PSLF program by tying employer eligibility to ambiguous definitions of illegal conduct. City agencies will need to navigate the vagueness of the proposed rule, adding administrative strain on human resources departments. The notice accompanying the proposed rule also observes that critical fields that provide the most basic services to City residents, like K-12 education, healthcare and "governance," may be especially impacted.

Additionally, the City is comprised of multiple agencies sharing one employer identification number (EIN), and the proposed rule raises the question of whether a determination by the ED Secretary regarding activities conducted by one agency could restrict PSLF employer eligibility for employees of other agencies of the same government. While the proposed rule notes the possibility of considering agencies as "separate under one EIN," it does not detail how this would be operationalized, and notes that the "Secretary maintains ultimate authority" to consider City agencies as separate employers. Employers who lose their PSLF status will be able to regain eligibility after ten years or upon approval of a "corrective action plan," according to the proposed rule. However, the scope of the corrective action plan includes "any other terms or conditions imposed by the ED Secretary" designed to ensure compliance with the rule and raises concerns of whether an entity would be able to meet the requirements.

The City agrees that PSLF is a vital program that should be protected, and we acknowledge that operational reforms could improve efficiency and effectiveness for both ED and borrowers. But we urge reforms to focus on simplifying access for public servants, not creating more complexity and uncertainty. The existing complicated rules have resulted in only 2.3% of processed applications being accepted since November 2020.[8] ED also appears unable to process current applications in a timely manner, with a backlog of over 70,000 PSLF buyback requests as of August 2025.[9] With the recent reduction in staff at ED, we are concerned that even without this

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Equivalent Staffing Levels as of June 30, 2025, Fiscal Years 2025 to 2029, available at: https://www.nyc.gov/assets/omb/downloads/pdf/adopt25/adopt25-stafflevels.pdf

[8] Melanie Hanson, "Student Loan Forgiveness Statistics [2024]: PSLF Data." Education Data Initiative, August 30, 2024. Accessed August 26, 2025. https://educationdata.org/student-loan-forgiveness-statistics.

[9] *American Federation of Teachers v. U.S. Department of Education, et al*, 1:25-cv-802-RB

proposed rule employee certification and application processing will be further burdened and delayed for borrowers.

III. The Proposed Rule is Unlawful

a. The Proposed Rule is Arbitrary and Capricious

The proposed rule violates the Administrative Procedure Act because it is arbitrary and capricious. An agency action is arbitrary or capricious where it is not "reasonable and reasonably explained."[10] An agency must provide "a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made."[11] Here, while stating that there is "a critical and urgent need" to reform the PSLF program, because "the current regulatory framework has exposed the PSLF program to potential misuse," ED has made no finding that any organizations that are eligible under the current rules are actually engaging in unlawful activity, or that the existent laws regarding the conduct targeted by the rule are insufficient in protecting the PSLF program and American taxpayer. For example, ED premises the rule on the illegality doctrine used by the Internal Revenue Service to deny or revoke an organization's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Under this doctrine, if a non-profit is in fact organized for an illegal purpose, the IRS could revoke the tax-exempt status of the non-profit, thereby rendering it ineligible for the PSLF program. Similarly, the proposed rule seeks to prevent the indirect subsidization of employers who are purportedly engaging in conduct in violation of the Civil Rights Act of 1964. Under Title VI of that act, for example, the federal government can terminate federal funding of entities, including entities covered by this proposed rule, that engage in discrimination and thereby eliminate the direct subsidization of illegal activity.

There is also a mismatch between the certification required under the proposed rule and the employer eligibility determination to be made by the ED Secretary; an employer must certify that they are not engaged in activities with a substantial illegal purpose, while the ED Secretary would only find an employer ineligible if those activities are "material" or somehow significant based on the "frequency and the severity of said activities." The rule provides that an employer who fails to make the certification would be deemed ineligible, even though the purportedly illegal activities of the employer may not be material. Under this framework, the certification, which must be made under penalty of perjury, appears to be nothing more than an improper attempt to influence the lawful activities of a qualifying employer.

In its current form, the proposed rule could also render ineligible an entire city or state government. The rule apparently seeks to mitigate this concern by authorizing the ED Secretary to single out government agencies of a state or local government that engage in purportedly unlawful conduct. Far from allaying concerns, this approach confers even greater authority on the ED

D.D.C. Filed August 15, 2025. Accessed August 26, 2025. https://storage.courtlistener.com/recap/gov.uscourts.dcd.278527/gov.uscourts.dcd.278527.39.0.pdf.

[10] *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

[11] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

Secretary to incentivize employment activities not only between state and local governments, but also within state and local governments. Although ED states that the proposed rule has no substantial effect on the distribution of power and responsibilities among the various level of governments, this type of meddling in the affairs of state and local governments suggests otherwise.

An action is also arbitrary and capricious if the agency "failed to consider . . . important aspects of the problem before" it.[12] An agency must "pay[] attention to the advantages *and* the disadvantages" of its decision.[13] In addition, when an agency "rescinds a prior policy," the agency must, at minimum, "consider the 'alternatives' that are within the ambit of the existing policy," "assess whether there were reliance interests," and "weigh any such interests against competing policy concerns."[14] ED has not taken into account that the proposed rule may undermine the purpose of its governing legislation by significantly hindering non-profits' and governments' ability to recruit highly-qualified public servants. Moreover, for nearly 20 years, PSLF employers and their employees have operated within and relied upon the framework of the College Cost Reduction and Access Act of 2007. Employers may suddenly find themselves ineligible for PSLF, when they had no prior indication that their conduct would now be considered illegal. And long-time employees may be forced to change jobs to benefit from loan cancelation. Nonprofits make up nearly 10 percent of the U.S. workforce – the proposed rule may result in job loss and potential gaps in much-needed services that New Yorkers rely on.

a. The Proposed Rule is Contrary to Law

In establishing the PSLF program, the College Cost Reduction and Access Act of 2007 provides, with no exceptions, that all government and 501(c)(3) nonprofit organizations, and certain other nonprofit organizations are PSLF-qualifying employers.[15] "Public service job" in the Act is defined in part as 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" or a job at a domestic government entity. ED does not have the authority to restrict eligibility of these enumerated employers under PSLF, and doing so is unlikely to pass judicial review. Courts approach an agency's interpretation of a statute with "traditional tools of statutory construction" to "resolve statutory ambiguities" and "determine the best reading of the statute."[16] In determining the best reading, it is axiomatic that "[c]ourts may not engraft an unwritten … exception" onto a statute.[17]

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[12] *Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 25 (2020) (citation omitted); *see also id.* at 30.

[13] *Michigan v. E.P.A.*, 576 U.S. 743, 753 (2015).

[14] *Regents*, 591 U.S. at 30, 33.

[15] U.S. Congress, House, *College Cost Reduction and Access Act,* H.R.2669, 110th (2007-2008). https://www.congress.gov/bill/110th-congress/house-bill/2669.

[16] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400-01 (2024).

[17] *Ross v. Blake*, 578 U.S. 632, 648 (2016).

The proposed rule also grants the ED Secretary impermissibly broad discretion to make the legal determination that an employer has engaged in an activity with a "substantial illegal purpose," despite ED lacking the expertise or even authority to do so. In rendering such determinations, ED would be acting far afield from its statutory powers and duties. The provisions that govern the ED Secretary's determination are also improperly vague, which will result in confusion and uncertainty on the application of the rule. It is not clear, for example, which or how many employees' actions are required for an employer itself to be considered engaged in an activity with a substantial illegal purpose.

IV. Conclusion

With the last of the pandemic-era protections expiring, it is more urgent than ever to provide borrowers with a student loan system capable of delivering payment relief and debt forgiveness. According to a recent Federal Reserve Bank of New York report, 10.2% of aggregate student loan debt was 90 or more days delinquent and student loan balances amounted to $1.64 trillion in the second quarter of 2025, indicating significant burdens on Americans and the economy.[18] The City strongly urges ED to withdraw the proposed rule as it threatens to further burden borrowers, non-profits and local governments, is arbitrary and capricious, and contrary to law.

Sincerely,

Muriel Goode-Trufant

[18] *Household Debt and Credit Report (2025: Q2).* 2025. Federal Reserve Bank of New York. https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2025Q2