Council on Foundations

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September 17, 2025

Tamy Abernathy
Director, Policy Coordination Group
Office of Postsecondary Education
United States Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: William D. Ford Federal Direct Loan (Direct Loan) Program Notice of Proposed Rulemaking

Dear Director Abernathy,

The Council on Foundations (the Council) appreciates the opportunity to provide our input and comments to the Department of Education (the Department) on the proposed rule to amend the Public Service Loan Forgiveness Program (PSLF).

The Council is a nonprofit membership association that serves as a guide for philanthropies as they advance the greater good. Building on our 75-year history, the Council supports over 1000 member organizations in the United States and around the world to build trust in philanthropy, expand pathways to giving, engage broader perspectives, and co-create solutions that will lead to a better future for all.

The philanthropic and nonprofit sectors are a key source of support for everyday Americans. In the past year alone, charitable nonprofits have provided critical disaster relief in response to the flooding in Texas; stepped up their efforts to feed Americans at a time of economic uncertainty; and built homes for post-9/11 veterans injured in combat. To support this work, nonprofits employ about 12.5 million Americans in every community with a variety of missions, including education, health, human services, economic development, and arts and culture.

The PLSF is an important part of ensuring charitable nonprofits can continue to attract a skilled workforce. Due to this importance, any uncertainty about whether certain employers are qualifying employers will undermine these benefits. Therefore, we urge the Department to reconsider the inclusion of the following section:

- Qualifying Employer (§ 685.219(b)(27)) The Department proposes modifying the existing definition of *qualifying employer* in § 685.219(b). At the direction of the Secretary and consistent with the guidance in E.O. 14235, the Department would revise the definition of *qualifying employer* to exclude organizations that engage in activities that have a substantial illegal purpose.

Current law provides that all section 501(c)(3) organizations are eligible as a qualified employer under PSLF. The statute (20 U.S.C. § 1087e(m)(3)(B)(i)) clearly defines eligibility under PSLF and only Congress can make such changes. The definition of "public service job" in the PSLF statute states that the term "public service" job means 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." The process for which an organization receives and maintains section 501(c)(3) status is extensive and includes a comprehensive review of the organization's charitable purposes and activities. There are already processes in place to penalize nonprofits and their employees for engaging in illegal behaviors, including revocation of tax-exempt status. Such processes live within the IRS, U.S. Department of the Treasury, and Department of Justice. If the Department of Education believes that any organization is engaging in illegal activities, there are also processes for them to refer those organizations to the Department of Justice and the IRS to investigate.

In creating an additional review or determination of a category of charitable organizations that will no longer be considered Qualifying Employers, this rule sets a concerning precedent, injecting uncertainty into a critical program for public service employees. The proposed rule would cause eligibility for PSLF to change with each successive presidential administration based on how the Department of Education determined substantial illegal purpose that would be completely separate from the IRS's determination and analysis.

Nonprofit employees are not only a key part of the overall workforce: they are also critical service providers. Americans in every community in the country rely on these public service employees to provide rural healthcare, feed the hungry, respond to disasters before anyone else, and perform religious services. These employees are often paid less than their private sector counterparts and choose nonprofits out of a commitment to service. According to Candidly, this especially holds for rural and underserved communities already struggling with professional staffing. For those communities, and as Congress recognized through its creation of the program, PSLF is an essential tool for competing with higher-paying urban and private sector roles.

Creating uncertainty and confusion around PSLF, a critical incentive for building and maintaining a skilled nonprofit workforce, would ultimately harm the hundreds of millions of Americans who rely on these nonprofit employees. We urge the Department to rescind this provision.

In addition, we urge the Department to reconsider the inclusion of the following sections within the proposed rule:

- 685.219(h) to establish that the Secretary would determine by the preponderance of the evidence, and after notice and opportunity to respond, that a qualifying employer has engaged on or after July 1, 2026, in activities that have a substantial illegal purpose by considering the materiality of any illegal activities or actions. Also, the Secretary will deem certain actions as conclusive evidence that the employer engaged in activities that have a substantial illegal purpose.

- 685.219(i) to establish that the Secretary will determine that a qualifying employer engaged in activities that have a substantial illegal purpose when (1) the Secretary receives an application in which the employer fails to certify that it did not participate in activities that have a substantial illegal purpose, or (2) the Secretary otherwise determines that the qualifying employer engaged in such activities under the standard set forth in § 685.219(h).

Public charities must respect the rule of law. Charitable organizations engaging in illegal behavior are bad actors that hurt public trust in the integrity of the nonprofit sector. As the proposed rule states, organizations created for a substantial illegal purpose will rightfully be denied section 501(c)(3) status and are ineligible for continued tax-exempt status. There is an existing process within the IRS to strip a nonprofit of its 501(c) status if it is found to be engaging in illegal activities, which would remove the employer and its workers from PSLF eligibility. This is in addition to any prosecution a nonprofit and its employees might face for criminal or otherwise illegal behavior.

The proposed rule, which includes sections 685.219(h) and 685.219(i), is unnecessarily duplicative of the existing process and does not provide adequate due process for nonprofit qualified employers. The decision to strip the eligibility of an organization would be determined by a "preponderance of the evidence" and without the opportunity to appeal to an independent authority. The addition of sections 685.219(h) and 685.219(i) is duplicative, circumvents the existing process that has been set forth by Congress in the Internal Revenue Code to provide organizations due process protections, and causes an undue burden on nonprofit organizations, the millions of Americans employed by those nonprofits, and the hundreds of millions of Americans who rely every day on the services they deliver.

Thank you for considering this input as part of the rulemaking process. To discuss the Council's recommendations in further detail or to explore options of how to collaborate with the philanthropic sector at large, do not hesitate to contact me or our Vice President of Government Affairs and Legal Resources, Jenn Holcomb, at govt@cof.org.

Sincerely,

Kathleen Enright
President and CEO