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Comments of Legal Aid DC in Response to the Department of Education's Notice of Proposed Rulemaking for the Public Service Loan Forgiveness Program; Docket ID ED-2025-OPE-0016

Legal Aid DC submits these comments in response to the Department of Education's recent Notice of Proposed Rulemaking for the Public Service Loan Forgiveness (PSLF) program. Legal Aid DC is the oldest and largest general civil legal services provider in the District of Columbia. Legal Aid DC is a section 501(c)(3) nonprofit that provides legal representation, free of charge, to people living in poverty. Last year alone, Legal Aid DC served more than 10,000 District residents who were not able to afford a lawyer, on a broad range of legal matters related to housing, public benefits, family law, consumer law, and immigration.

Jobs at Legal Aid DC, like those at legal services and public defender organizations across the country, fit squarely within the statutory definition of "public service jobs" that qualify for the PSLF program. The statute defines "public service job" to include "a full-time job in . . . public interest law services (including . . . legal advocacy on behalf of low-income communities at a nonprofit organization)." 20 U.S.C. § 1087e(m)(3)(B). Accordingly, Legal Aid DC has consistently employed law school graduates who have benefited from the PSLF program that is the subject of these comments.

The Agency Lacks Statutory Authority to Limit Loan Forgiveness Based on Factors Not Stated in the Statute

The statute that establishes the PSLF program excuses the borrower from paying the balance of interest and principal due on the federal direct loans at issue if the borrower (1) has made 120 monthly payments (under a payment plan defined in the statute) and (2) is (and has been for those 120 months) employed in a "public service job" as defined in the statute. For loans that meet these statutory criteria, the statute implements loan forgiveness by directing that "the Secretary [of Education] *shall cancel* the balance of interest and principal due, in accordance with paragraph (2)." 20 U.S.C. § 1087e(m)(1) (emphasis added). Paragraph (2) states that after the 120 months have passed, "the Secretary *shall cancel* the obligation to repay the balance of principal and interest due as of the time of such cancellation . . . ." *Id*. § 1087e(m)(2) (emphasis added). By using the term "shall" — twice in the same subparagraph — the statute emphatically imposes a mandatory duty on the Secretary to cancel the balance, and obligation to repay, when the statutory criteria are satisfied. *Bufkin v. Collins* 145 S. Ct. 728, 737 (2025) (construing the statutory term "shall" as a "mandatory command"); *Kingdomware Techs., Inc. v.*

United States, 579 U.S. 162, 171-72 (2016) ("'shall' is 'mandatory' and 'normally creates an obligation impervious to judicial discretion'") (citation omitted). Accordingly, the Secretary has no statutory authority to refuse to cancel that balance and repayment obligation based on criteria not mentioned in the statute.

On March 7, 2025, the President issued Executive Order #14235, which directed the Secretary of Education (in coordination with the Secretary of the Treasury as appropriate) to propose regulatory revisions that would prevent cancellation of the foregoing loan obligations based on criteria not mentioned in the statute. Specifically, the Executive Order lists five categories of legal violations that would exclude employers from the program, thereby eliminating the statutory loan forgiveness rights of borrowers who work for such employers:

> (a) aiding or abetting violations of 8 U.S.C. 1325 or other Federal immigration laws;
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> (b) 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 violence for the purpose of obstructing or influencing Federal Government policy;
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> (c) child abuse, including the chemical and surgical castration or mutilation of children or the trafficking of children to so-called transgender sanctuary States for purposes of emancipation from their lawful parents, in violation of applicable law;
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> (d) engaging in a pattern of aiding and abetting illegal discrimination; or
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> (e) engaging in a pattern of violating State tort laws, including laws against trespassing, disorderly conduct, public nuisance, vandalism, and obstruction of highways.

The proposed rule tracks the Executive Order, proposing to exclude from the program employers that engage in the same five categories of legal violations.

Legal Aid DC does not condone violations of law. But to the extent that there are organizations that actually violate the law, such violations can and should be addressed through other remedies. There is nothing in the statute that empowers the Secretary to deny loan forgiveness to borrowers who work for employers who fall into any of the five categories stated in the Executive Order and the proposed rule.

As noted above, the statute mandates loan forgiveness for borrowers who have worked in "public service jobs" for the required 120 months (and paid amounts due on their loans during

that period). The statute provides the following detailed definition of "public service job," and the definition does not refer to the employer's compliance with law:

> (i) a full-time job in emergency management, government (excluding time served as a member of Congress), military service, public safety, law enforcement, public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics), public education, social work in a public child or family service agency, public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a nonprofit organization), early childhood education (including licensed or regulated childcare, Head Start, and State funded prekindergarten), public service for individuals with disabilities, public service for the elderly, public library sciences, school-based library sciences and other school-based services, or 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 (ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 1059c(b) of this title and other faculty teaching in high-needs subject areas or areas of shortage (including nurse faculty, foreign language faculty, and part-time faculty at community colleges), as determined by the Secretary.

20 U.S.C. § 1087e(m)(3)(B). There is no way to shoehorn any of the five proposed exclusions into any of the terms of the statute. It is quite telling that the agency does not even try to do so in the preamble to the proposed rule.

In the past, the agency has appropriately limited its administrative interpretation of the term "public service job" by supplying sub-definitions for the specific job categories listed in the statute. Accordingly, the current version of the applicable regulation simply elaborates on those statutory categories. 34 C.F.R. § 685.219(b). By contrast, the proposed rule disregards the term of art "public service job" (as well as the specific statutory job categories) and instead purports to interpret the general term "public service" as the statutory basis for the five qualification exclusions. The agency's interpretive approach is fundamentally flawed, conflicting with the longstanding rule that when Congress "define[s] a word or phrase in a specialized way" the agency cannot apply a looser "ordinary meaning" interpretation to that word or phrase. *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1291 (2025). In addition, it is the "best meaning" of that specialized definition — not the agency's interpretation of it — that controls. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The best meaning of the statutory definition of "public

service job" is limited to the categories listed in the statute and forecloses all five of the violation-based qualification exclusions in the proposed rule.

Furthermore, the agency erroneously claims statutory authority for its proposed rule by applying the IRS "illegality doctrine." That doctrine "imposes an implied requirement that organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code must not have a substantial illegal purpose." 90 Fed. Reg. 40,154, 40,156 (Aug. 18, 2025). Section 501(c)(3) exempts organizations from federal income tax, among other things, if they are "organized and operated exclusively for religious, charitable . . . or educational purposes." 26 U.S.C. § 501(c)(3). The "illegality doctrine" arises from administrative and judicial interpretations of the statutory phrase "religious, charitable or educational." *Bob Jones Univ. v. United States*, 461 U.S. 574, 585-86 (1983). When Congress used that phrase in section 501(c)(3), it incorporated centuries-old common law doctrines defining the requirements for charities.[1] One of those common law requirements is the illegality doctrine — the requirement that "an institution seeking tax exempt status must serve a public purpose and not be contrary to established public policy." *Id*. at 586. Under that doctrine, organizations with an illegal purpose are denied tax-exempt status. *Iowaska Church of Healing v. Werfel*, 105 F.4th 402, 407 (D.C. Cir. 2024). There is absolutely no basis for applying that tax doctrine in this wholly unrelated context. The loan-forgiveness statute at issue here does not use the phrase "religious, charitable, or educational" (which is the statutory basis for the doctrine). And the longstanding common-law history incorporated into section 501(c)(3) — which is the basis for denying tax-exempt status to organizations with an illegal purpose — has no application here (where there is no common law precursor of any kind to the statutory right to loan forgiveness).

Finally, the express language of the statute conclusively proves that qualifying "public service jobs" may be provided by employers that do not comply with section 501(c)(3) (under the "illegality doctrine" or otherwise). The statute lists more than twenty types of "public service jobs." The list ends with the disjunctive term "or," which signifies that each listed job is an acceptable alternative. One of the listed alternatives is a job at "an organization that is

[1] *Bob Jones Univ.*, 461 U.S. at 586 (discussing the "unmistakable evidence that, underlying all relevant parts of the [Internal Revenue] Code, it is the intent that entitlement to tax exemption depends upon meeting certain common-law standards of charity"); *see also id*. at 588 (discussing 19th century origins of common law "charity" standards incorporated into section 501(c)(3)); *id*. at 588 n.12 ("The form and history of the charitable exemption and deduction sections of the various income tax Acts reveal that Congress was guided by the common law of charitable trusts."); Rev. Rul. 71-447 ("Under common law, the term 'charity' encompasses all three of the major categories identified separately under section 501(c)(3) of the Code as religious, educational, and charitable. Both the courts and the Internal Revenue Service have long recognized that the statutory requirement of being 'organized and operated exclusively for religious, charitable,* * * or educational purposes' was intended to express the basic common law concept.").

described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title." 20 U.S.C. § 1087e(m)(3)(B)(i). But the remainder of the listed alternative jobs do not have that limitation, allowing those employers to qualify even if they do not comply with section 501(c)(3).

Therefore the agency is simply wrong when it asserts (in the preamble) that all non-governmental organizations must comply with section 501(c)(3) (including the "illegality doctrine") to be qualifying employers. *See* 90 Fed. Reg. at 40,156. That is not what the statute says. And that is not even what the agency's own proposed rule says. The proposed rule specifies that a nongovernmental organization may qualify *either* because it complies with section 501(c)(3) *or* because it is a nonprofit that provides jobs that fall within one of the proposed rule's subject-matter categories. *See* 90 Fed. Reg. at 40,174 (proposed rule sections 685.219(b)(27)(i)(C), (i)(E).[2] The current version of the regulation includes this same distinction between (1) qualifying non-profits that are tax-exempt under section 501(c)(3) and (2) other qualifying non-profits that provide non-governmental public service as defined in the regulation. 34 C.F.R. § 685.219(b)("Qualifying Employer" definitions (iii) and (v)). And the same distinction appeared in an earlier version of the regulation, under which an employer could qualify if it either was a "not-for-profit organization classified under Section 501(c)(3) of the Internal Revenue Code, or [a] not-for-profit private organization that is not classified under Section 501(c)(3) so long as it 'provides [qualifying] public services' and does not engage in certain disqualifying activities." *ABA v. United States Dep't of Educ.*, 370 F. Supp. 3d 1, 12 (D.D.C. 2019). Under the agency's proposed, current and past regulations, an employer can qualify for the PSLF program without complying with section 501(c)(3) (including the illegality doctrine).

In sum, implementing any of the five qualification exclusions would change the scope of the mandatory duty for the Secretary to cancel the balance and obligation to repay when the statutory criteria are satisfied. And the agency has no authority to do that. Where, as here, "a statute commands an agency without qualification to carry out a particular program in a particular way, the agency's duty is clear: if it believes the statute untoward in some respect, then 'it should take its concerns to Congress,' for '[i]n the meantime it must obey [the statute] as written.'" *Oceana, Inc. v. Locke*, 670 F.3d 1238, 1243 (D.C. Cir. 2011). It is well established that "[t]he agency's policy preferences cannot trump the words of a statute." *Nat'l Treasury Emps. Union v. Chertoff*, 452 F.3d 839, 865 (D.C. Cir. 2006). Put another way, "an agency is constrained by the language of the statute it must administer and may not rewrite or redefine terms in a way

[2] State law governs the formation and recognition of nonprofit organizations. An organization can qualify as a nonprofit under state law without satisfying the requirements of section 501(c)(3). *See, e.g.*, 29 C.F.R. § 2.38(a) ("In general, DOL does not require that an organization, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code in order to be eligible for Federal financial assistance under DOL social service programs. Many such programs, however, do require an organization to be a 'nonprofit organization' in order to be eligible for such support.").

that contradicts the original statute." *Miller v. Garland*, 674 F. Supp. 3d 296, 305 (E.D. Va. 2023) (citing *Texas v. United States*, 497 F.3d 491, 500-01 (5th Cir. 2007)*; see also Tex. Children's Hosp. v. Azar*, 315 F. Supp. 3d 322, 334 (D.D.C. 2018) (a regulation cannot "be used to contradict the text of the statute or rule at issue" (citing *Nat'l Wildlife Fed'n v. Envt'l Prot. Agency*, 286 F.3d 554, 569-70 (D.C. Cir. 2002)); *NRDC, Inc. v. Ross*, 331 F. Supp. 3d 1338 (Ct. Int'l Trade 2018) ("It is worth noting that agency regulations cannot negate mandatory language in a statute: 'Congress did not set agencies free to disregard legislative direction in the statutory scheme that the agency administers.'" (citing *Heckler v. Chaney*, 470 U.S. 821, 833 (1985)).

Furthermore, the fact that the five qualification exclusions originated in an Executive Order does not change the foregoing analysis. The President has no authority to change mandatory duties clearly established by statute. "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J. concurring) ("When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.").

Any Final Rule That Includes Any of the Qualification Exclusions Should Specify That They Do Not Apply to Legal Representation of Parties Alleged to Have Violated the Laws at Issue

If the agency does finalize a rule that includes any of the five qualification exclusions, it should specify that they do not apply to *legal representation* of parties alleged to have violated the laws specified in the rule — whether the representation relates directly to such alleged violations or to other unrelated matters.

Applying the exclusions to such legal representation would conflict with the rule's exclusion of employers that have "engage[d] in activities that have a substantial illegal purpose" — defined with respect to five categories of legal violations committed by the employer either as a principal or as an aider and abettor. 90 Fed. Reg. at 40,175. Legal representation of parties alleged to have committed such violations plainly does not violate any law. To the contrary, our adversarial system of justice depends fundamentally upon lawyers who represent both sides of a controversy, including controversies involving the five categories of alleged violations listed in the proposed rule. The adversarial system of justice is based on the "fundamental premise" that "the robust and fearless exchange of ideas as the best mechanism for uncovering the truth." *Lefebure v. D'Aquilla*, 15 F.4th 670, 674 (5th Cir. 2021). Therefore "'the fundamental assumption of our adversary system' is that 'strong (but fair) advocacy on behalf of opposing views promotes sound decision making.'" *Id*. at 674-75. The system "empowers attorneys to zealously represent" their clients, even when they have "unpopular causes." *Id*. at 675 n.1.[3]

[3] Although it has no application here, the "illegality doctrine" that the agency relies upon so heavily is fully consistent with these principles. "The fact that an organization, in carrying out its

Far from violating the law, attorneys uphold the law when they represent clients accused of legal violations. To the contrary, it is the government that would violate the law if it restricted loan forgiveness to lawyers based upon the clients they represent. In a case involving legal services lawyers, the Supreme Court has held that the "advocacy by [an] attorney to the courts" is "speech and expression" that enjoys First Amendment protection. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 542-49 (2001). Accordingly, "state action designed to retaliate against and chill an attorney's advocacy for his or her client strikes at the heart of the First Amendment." *Eng v. Cooley*, 552 F.3d 1062, 1069 (9th Cir. 2009). Penalizing lawyers for the clients they represent, or the arguments they make on behalf of clients, would violate the First Amendment prohibition on viewpoint discrimination, which is a "blatant and egregious form of content discrimination," *Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015), that "is uniquely harmful to a free and democratic society." *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 187 (2024). Such penalties also would violate First Amendment rights to petition the government for redress of grievances. The First Amendment's "Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes," *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). A petition may "take[] the form of a lawsuit," as well as advocacy before executive agencies and their personnel. *Id*. at 390.

Furthermore, representation of clients alleged to have violated the laws at issue does not constitute *aiding and abetting* a violation of law. The elements of aiding and abetting include "specific intent to facilitate the commission of a crime by another," "requisite intent of the underlying substantive offense," and "assist[ing] or participat[ing] in the commission of the underlying substantive offense." U.S. Dep't of Just., Crim. Res. Manual § 2474: Elements of Aiding and Abetting (1998). Lawyers who represent parties alleged to have violated the law do not engage in such activities. *See, e.g.*, *Piscitello v. Giannetti*, No. 15-CV-3989, 2016 U.S. Dist. LEXIS 51600, *19 (S.D.N.Y. Apr. 18, 2016) ("attorneys do not . . . risk liability for aiding and abetting . . . merely by providing legal representation"). Indeed, because such clients are often unpopular and often unable to afford legal representation, justice (and thus the public) is served when there are lawyers available to advocate on their behalf.

Finally, applying the exclusions to such legal representation would conflict with the statute. The statute expressly includes "public defense" within the definition of "public service job." 20 U.S.C. § 1087e(m)(3)(B)(i). This provision manifests Congress's intent that the program covers organizations that represent parties accused of serious legal violations (even including

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primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3)" as long as it does not participate in certain lobbying and political activities. 26 C.F.R. § 1.501(c)(3)-1(d)(2); *see also* Rev. Rul. 80-278 ("[T]he fact that [an organization's] activity reflects a particular viewpoint or opinion on a controversial issue does not preclude the organization from qualifying for exemption under section 501(c)(3) of the Code.").

crimes such as those listed in the proposed rule). Congress obviously did not equate legal representation with lawbreaking. Neither can the agency in its final rule.

Any Final Rule That Includes Any of the Qualification Exclusions Should Specify That They Do Not Apply to Any Loan Initiated Before the Effective Date of the Final Rule

Even assuming that the agency had statutory authority to implement the qualification exclusions — which it does not — the agency would lack statutory authority to apply them to loans initiated before the final rule's effective date. Accordingly, if the agency does finalize a rule that includes any of the five qualification exclusions, it must specify that the rule at most applies only to loans initiated after that date.

A final rule that applied to loans initiated before its effective date would be a retroactive rule. A "rule operates retroactively when it 'would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'" *Bd of County Comm'rs of Weld County, Colorado v. EPA*, 72 F.4th 284, 292 (D.C. Cir. 2023) (quoting *Landgraf v. USI Film Prods*., 511 U.S. 244, 280 (1994)); *see also Nat'l Mining Ass'n. v. U.S. DOI*, 177 F.3d 1, 8 (D.C. Cir. 1999) (an "administrative rule is retroactive if it 'takes away or impairs vested rights acquired under existing law'"). Student borrowers currently enter into the loans at issue with a statutory and regulatory entitlement to loan forgiveness ten years later (assuming that they satisfy the requirements of the statute and current version of the rule) — without regard to whether their employers fell within one of the categories contemplated by the new rule. If a new version of the rule terminated that entitlement (by applying one of the five qualification factors) the rule would impair rights that borrowers had when they assumed liability under their loans, increase their liability for repayment, and impose new repayment duties for the loans.

The agency does not have statutory authority to issue a retroactive rule like that. Because of obvious concerns about fairness, retroactivity "is the exception" and not the norm in legislation, and in "rulemaking, the administrative analogue to legislation, exceptions are fewer still." *Motion Picture Ass'n of Am. v. Oman*, 969 F.2d 1154, 1155 (D.C. Cir. 1992). As a result, "an agency may not promulgate 'retroactive' rules without express authorization from Congress." *Cox v. Kijakazi*, 77 F.4th 983, 991 (D.C. Cir. 2023) (citing *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204, 208 (1988)); *see also Motion Picture Ass'n*, 969 F.2d at 1157. ("If Congress has not conferred retroactive rulemaking power on an agency, the agency has none to exercise."). There is no such express authorization here. The statutory provision for this rulemaking does not mention retroactive rules. *See* 20 U.S.C. § 1098a(a)(1), (b)(1).

The agency cannot avoid these retroactivity prohibitions by limiting its exclusions of employers to those the agency *disqualifies* prospectively, on or after a specified future date (proposed to be July 1, 2026). *See* 90 Fed. Reg. at 40,175-76 (proposed rule §§ 685.219(c)(4) (preventing payments after July 1, 2026 from being credited as qualifying payments if employer is

disqualified); 685.219(h)(1) (excluding employers disqualified by the agency on or after July 1, 2026)). Such future disqualifications would still be unlawfully retroactive from the borrowers' perspective if they were applied to loans taken out before the effective date of the final rule (and still within the ten-year period established by the statute). That is because the terms and conditions of such loans would be modified by changing the forgiveness rules after the fact, even if the modification did not occur until on or after July 1, 2026.

Should the agency adopt a new rule that restricts PSLF eligibility, therefore, it must specify that any such regulatory changes apply only to future loans, and that the current version of the rule governs loans initiated before the final rule's effective date even if the ten-year time frame for loan forgiveness extends after that date.

Narrowing the definition of a "public service job" for purposes of determining PSLF eligibility would undermine the purpose of the program and the ability of public service organizations to continue to serve the public good

Student loans are a tremendous barrier for people seeking employment in public service jobs, particularly where salaries are persistently low compared to private sector jobs. Disparities between student debt undertaken and public-service-sector salaries, and the prospect of more competitive salaries and benefits in the private sector, mean that many borrowers may forgo public service jobs altogether because they unable to afford to pursue that line of work. The result is severe workforce shortages in the nonprofit sector. *See* Nat'l Council of Nonprofits, 2023 Nonprofit Workforce Survey Results: Communities Suffer as Nonprofit Workforce Shortage Crisis Continues 3-4 (2023), https://perma.cc/7NDN-27LG.

Congress, with bipartisan support, established the PSLF program (as part of the College Cost Reduction and Access Act, Pub. L. 110-84, 121 Stat. 784 (2007)) to encourage entry for a wide range of public service professions. The PSLF program makes it possible for borrowers to enter public service careers and carry out critically important work for the public good. Indeed, a significant number of Legal Aid DC staff have indicated that were it not for their ability to participate in the PSLF program, they would simply be unable to pursue a legal services career.

Numerous public service organizations engage in legal services advocacy and litigation that sometimes includes representation of politically unpopular clients. Individuals and families living in and on the cusp of poverty are entitled to rights and due process, even if they may have been accused (or in some cases, convicted) of engaging in unlawful activity or violating civil, criminal, and immigration laws. These organizations provide their clients with zealous representation regardless of who they are or what they have done. Department regulations that restrict PSLF eligibility based on the kinds of activities that an organization engages in or who its clients are potentially places these organizations in the position of having to make the impossible choice of either carrying out work in furtherance of their missions, on the one hand, or ensuring their continued eligibility in a government program, on the other. Losing eligibility as

a qualifying PSLF employer — or the threat of such a loss — would cause immediate, serious, and lasting harm.

If these organizations' employees lose access to the program, it will be economically difficult — if not impossible — for them to remain in public service work there. Even the threat of losing access to the PSLF program would make it more difficult for these organizations to attract new employees and to retain existing ones, because they could no longer offer these employees the prospect of student loan forgiveness after making the requisite number of payments. That, in turn, would frustrate their ability to carry out their critical organizational missions in the public interest.

Legal Aid DC appreciates the opportunity to comment on the critical PSLF program and strongly urges the agency not to finalize the proposed rule.

Respectfully submitted,

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