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Department Changes Public Service Loan Forgiveness Program to Exclude Employers with a "Substantial Illegal Purpose"

By Sam Bissell

On October 31, 2025, the U.S. Department of Education ("ED" or "Department") issued a final rule amending its Public Service Loan Forgiveness ("PSLF") program regulations. The new rule removes PSLF eligibility from a qualifying employer if ED determines the employer engages in certain illegal activities such that the employer has a "substantial illegal purpose." Employers who lose PSLF eligibility under the amended rule will need to wait 10 years to re-establish eligibility, unless they enter into a corrective action plan with the Department. The Department contends that the new rule strengthens the integrity of the PSLF program and prevents "Federal funds from subsidizing harmful illegal activities through a program designed to reward public service."[1] The amended PSLF provisions become effective on July 1, 2026.

Background

Congress established the PSLF program in the College Cost Reduction and Access Act of 2007.[2] The PSLF statute provides that the Department of Education must cancel the remaining loan balance of an eligible Direct Loan borrower who has made 120 monthly payments under a qualifying repayment plan while "employed in a public service job."[3]

The Department initially promulgated PSLF program regulations that went into effect on July 1, 2009.[4] The first version of the PSLF program regulations used the term "public service organization" that was "derived from the statutory definition of 'public service job' in 20 U.S.C. § 1087e(m)(3)(B)."[5] In a 2022 final rule amending the PSLF program regulations, the Department replaced the term "public service organization" with the term "qualifying employer."[6] The PSLF regulation defines a "qualifying employer" as a government entity, a public child or family service agency, a tax-exempt organization, a Tribal college or university, or other nonprofit organizations that provide "a non-governmental public service […], attested to by the employer on a form approved by the Secretary" and are "not a business organized for profit, a labor union, or a partisan political organization."[7]

On March 7, 2025, the White House issued the Executive Order "Restoring Public Service Loan Forgiveness," in which it directed the Secretary of Education to propose regulations "that ensure the definition of 'public service' excludes organizations that engage in activities that have a substantial illegal

[1] 90 Fed. Reg. 48,966, 48,966-67 (Oct. 31, 2025).
[2] Pub. L. 110-84, 121 Stat. 800 (2007), https://www.congress.gov/110/plaws/publ84/PLAW-110publ84.pdf.
[3] 20 U.S.C. § 1087e(m)(1).
[4] *See* 73 Fed. Reg. 63,232 (Oct. 23, 2008).
[5] 73 Fed. Reg. 63,232, 63,242 (Oct. 23, 2008).
[6] 87 Fed. Reg. 65,904, 66,064 (Nov. 1, 2022).
[7] 34 C.F.R. § 685.219(b).

purpose."[8] Following the issuance of the Executive Order, the Department engaged in the negotiated rulemaking process, and issued a notice of proposed rulemaking ("NPRM") proposing changes to the PSLF regulation on August 18, 2025.[9]

Key PSLF Revisions in the 2025 Final Rule

The Department issued a final rule amending the PSLF regulation on October 31, 2025. The final rule amends the PSLF regulation's definition of "qualifying employer" to exclude "organizations that engage in activities such that they have a substantial illegal purpose."[10] In addition, as of July 1, 2026, no payment made by a borrower will be considered a qualifying payment for PSLF purposes for any month after the Department makes a determination that a qualifying employer engaged in illegal activities "such that it has a substantial illegal purpose."[11] The final rule adds language defining "substantial illegal purpose"[12] as:

- Aiding or abetting violations of Federal immigration laws;
- Supporting terrorism or engaging in violence for the purpose of obstructing or influencing federal government policy;
- Engaging in the chemical and surgical castration or mutilation of children (i.e. gender-affirming care) in violation of Federal or State law;
- Engaging in the trafficking of children to another state for the purposes of emancipation from their lawful parents in violation of Federal or State law;
- Engaging in a pattern of aiding and abetting illegal discrimination; or
- Engaging in a pattern of "violating state law," which the final rule defines as a "final, non-default judgment by a state court of" (i) trespassing, (ii) disorderly conduct, (iii) public nuisance, (iv) vandalism, or (v) obstruction of highways.[13]

The definition of "substantial illegal purpose" closely mirrors those listed in Executive Order 14235.

Procedures for Determining Whether an Employer has a "Substantial Illegal Purpose"

The Department will initiate the process to determine whether a qualifying employer engages in activities such that it has a substantial illegal purpose upon:

- The Department's initial determination that the qualifying employer engaged in activities such that it has a substantial illegal purpose.[14] The final rule provides minimal guidance on what evidence the Department will consider when making this initial determination. However, the final rule preamble states that the Department "may consider allegations as a basis to start an inquiry."[15] Additionally, the preamble states that "Department may also consider evidence that

[8] Executive Order 14235, *Restoring Public Service Loan Forgiveness*, 90 Fed. Reg. 11,885 (March 12, 2025).
[9] *See* 90 Fed. Reg. 40154 (Aug. 18, 2025) (Notice of Proposed Rulemaking).
[10] 34 C.F.R. § 685.219(b)(27)(ii) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,001 (Oct. 31, 2025).
[11] 34 C.F.R. § 685.219(c)(4) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,001 (Oct. 31, 2025).
[12] 34 C.F.R. § 685.219(b)(30) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,001 (Oct. 31, 2025).
[13] 34 C.F.R. § 685.219(b)(34) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,001 (Oct. 31, 2025).
[14] *See* 34 C.F.R. § 685.219(i)(1)(ii) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[15] 90 Fed. Reg. 48,966, 48,983 (Oct. 31, 2025).

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another entity, like a court, has adjudicated an issue when developing the factual basis for any action."[16]

- The Department's receipt of a PSLF application in which the employer fails to certify that it did not participate in activities that have a substantial illegal purpose.[17]

Under what the regulations refer to as the "employer reconsideration process," employers will receive "notice and opportunity to respond" to the Department's initial determination that the employer has engaged in activities such that it has a substantial illegal purpose.[18] The final rule provides very little detail on the procedures that the Department will use during the "employer reconsideration process." However, the final rule preamble, as well as fact sheet guidance issued by the Department, indicates that employers will be provided with notice, the record, and an opportunity to review, respond, and rebut the Department's findings to a neutral adjudicator.[19]

Following any response from the employer, the Department will make a final determination of whether the employer engaged in illegal activities such that it has a substantial illegal purpose by a preponderance of the evidence by considering "the materiality of any illegal activities or actions."[20] The final rule preamble states that under a "preponderance of the evidence" standard, the Department "will need to find that it is more likely than not that an organization's illegal activity is more than an insubstantial part of its activities that advance an illegal purpose"[21] In the NPRM, the Department indicates that it will consider the materiality of illegal activities "by gauging both frequency and the severity" of the activities.[22] The Department further states in the final rule that an illegal activity alone does not automatically mean an organization has a substantial illegal purpose,[23] and that eligibility decisions will "rest on the materiality of any illegal activities or actions central to the organization's mission, not incidental actions by individuals acting outside the scope of their employment."[24] The final rule's preamble states that the Department's eligibility determination must be explained in writing and supported by clear reasoning.[25]

When making the final eligibility determination, the Department will presume that any of the following is conclusive evidence that the employer engaged in activities that have a substantial illegal purpose: a final judgment by a State or Federal court, a plea of guilty or nolo contendere, or a settlement agreement where the employer is found to have engaged in or admits to have engaged in illegal activities that have a substantial illegal purpose.[26] Aside from this listing of conclusive evidence, the amended PSLF regulation provides limited detail on what other evidence the Department will consider. The final rule preamble states that when reviewing an employer's conduct, the Department "will consider any reliable evidence, including countervailing evidence provided by the employer."[27] The Secretary may not

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[16] 90 Fed. Reg. 48,966, 48,983 (Oct. 31, 2025).
[17] *See* 34 C.F.R. § 685.219(i)(1)(i) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[18] 34 C.F.R. § 685.219(h)(1) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[19] *See* 90 Fed. Reg. 48,966, 48,977 (Oct. 31, 2025); *see also Restoring Public Service Loan Forgiveness to Its Statutory Purpose*, at 2, https://www.ed.gov/media/document/pslf-fact-sheet-112456.pdf.
[20] 34 C.F.R. § 685.219(h)(1) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[21] 90 Fed. Reg. 48,966, 48,973 (Oct. 31, 2025).
[22] 90 Fed. Reg. 40,154, 40,164 (Aug. 18, 2025) (Notice of Proposed Rulemaking).
[23] *See* 90 Fed. Reg. 48,966, 48,987 (Oct. 31, 2025).
[24] 90 Fed. Reg. 48,966, 48,983 (Oct. 31, 2025).
[25] See 90 Fed. Reg. 48,966, 48,986 (Oct. 31, 2025).
[26] *See* 34 C.F.R. § 685.219(h)(1) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[27] 90 Fed. Reg. 48,966, 48,971 (Oct. 31, 2025).

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determine an employer has a substantial illegal purpose based upon the employer or its employees exercising their First Amendment protected rights, or any other rights protected under the Constitution.[28]

Employers that lose eligibility following a determination that they engaged in illegal activities such that they had a substantial illegal purpose may re-establish PSLF eligibility either by certifying on a borrower's application at least 10 years after the date of the Department's determination that the organization is no longer engaged in activities that have a substantial illegal purpose, or if the Department approves a corrective action plan signed by the employer containing (i) a certification the employer no longer engages in activities that have a substantial illegal purpose, (ii) a report describing the employer's compliance controls that are designed to ensure the employer does not continue to engage in activities that have a substantial illegal purpose, and (iii) any other conditions imposed by the Secretary.[29]

Unlike employers, employees may not request reconsideration of Department's determination that their employer is not a qualifying employer for PSLF purposes.[30]

Impact on Borrowers and Qualifying Employers

For borrowers and qualifying employers, the new rule will not impact any qualifying payments made by borrowers before July 1, 2026. When the rule goes into effect on July 1, 2026, if the Department makes an adverse final determination that an employer engaged in activities with a substantial illegal purpose, any payments made by employee borrowers after the determination will not be counted towards the 120 qualifying payments required for the PSLF discharge.[31] However, the preamble indicates the employees will not lose PSLF credit for any payments made towards forgiveness prior to the Department's final determination.[32]

Further, a qualifying employer can only lose qualifying employer status if the employer engaged in illegal activities on or after July 1, 2026.[33] Thus, a qualifying employer's prior "illegal activities" will not be used as a basis for revoking their qualified employer status. In addition, the preamble to the final rule states that qualifying employers who are under review will remain eligible until a determination is made by the Secretary.[34] As such, employees' loan payments made during the employer reconsideration process will still be credited towards the 120 qualifying payments.[35]

The amended PSLF regulations require that the Department notify borrowers both of a pending change in their employer's eligibility status and when their employer has ceased to be a qualifying employer as a

[28] *See* 34 C.F.R. § 685.219(h)(2) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[29] *See* 34 C.F.R. § 685.219(j) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[30] *See* 34 C.F.R. § 685.219(g)(7) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[31] 34 C.F.R. § 685.219(c)(4) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,001 (Oct. 31, 2025).
[32] *See* 90 Fed. Reg. 48,966, 48,984 (Oct. 31, 2025); see also id. at 48,979 ("With regard to borrowers employed by organizations that are currently qualifying employers, this final rule has no retroactive effect because any qualifying payment that the borrower made during the period of time that such employer was considered a qualifying employer will continue to count as such, including any payments made during the employer reconsideration process, even if the employer ultimately loses that status.").
[33] *See* 90 Fed. Reg. 48,966, 48,979 (Oct. 31, 2025).
[34] *See* 90 Fed. Reg. 48,966, 48,982 (Oct. 31, 2025).
[35] *See* 90 Fed. Reg. 48,966, 48,979 (Oct. 31, 2025).

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result of the Department's determination the employer has a substantial illegal purpose.[36] The Department maintains a listing of qualifying employers at https://studentaid.gov/pslf/employer-search, which is accessible to borrowers for purposes of certification or application. The final rule requires the Department to update the listing with any employer that regains eligibility after a loss of eligibility under the final rule.[37]

Challenges to the New Rule

The final rule engendered strong pushback from public service sector employers, who contend the rule targets organizations for engaging in politically disfavored but legal conduct. These critics also believe the final rule fails to articulate clear standards for when an employer has a "substantial illegal purpose." In a press release announcing several states' legal challenge to the PSLF final rule, New York Attorney General Letitia James states "this administration has created a political loyalty test disguised as a regulation. It is unjust and unlawful to cut off loan forgiveness for hardworking Americans based on ideology."[38]

The final rule was quickly challenged in district court. There are three current lawsuits. First, on November 3, 2025, 21 states and the District of Columbia filed a lawsuit in the U.S. District Court for the District of Massachusetts seeking to enjoin and vacate the final rule, on the grounds it exceeded the Department's statutory authority under the Higher Education Act and was arbitrary and capricious under the Administrative Procedure Act. Second, on the same day, local governments, nonprofit organizations, and associations representing nurses, teachers, social workers, government employees, and other professionals also filed a lawsuit in the District of Massachusetts, seeking to vacate the final rule on the similar grounds that it (1) exceeded the Department's statutory authority, (2) was arbitrary and capricious under the Administrative Procedure Act, (3) violated the plaintiffs' first amendment rights, and (4) was unconstitutionally vague. Third, on November 4, 2025, four tax-exempt organizations filed a lawsuit in the U.S. District Court for the District of Columbia, requesting that the District Court set aside the final rule on the grounds that it was contrary to and in excess of the Department's statutory authority under the Higher Education Act, was arbitrary and capricious under the Administrative Procedure Act, and violated the Due Process Clause and First Amendment of the Constitution. At the time of publication, these challenges are pending before the respective district courts, raising the possibility that the rule may not go into effect in July 2026 as planned.

Resources to Assist Borrowers

The Department provides comprehensive information including FAQs on the PSLF program on the FSA's Student Loan Forgiveness website and in a separate PSLF Help Tool. As of the date of this blog post, the Department has not incorporated the final rule into this guidance and published a banner on the website stating, "[t]he U.S. Department of Education published its final PSLF program regulations that will be effective on July 1, 2026. The program is not changing today, and borrowers do not need to take

[36] *See* 34 C.F.R. § 685.219(e)(9)-(10) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,001-49,002 (Oct. 31, 2025).
[37] *See* 34 C.F.R. § 685.219(k) (effective July 1, 2026); 90 Fed. Reg. 48,966, 49,002 (Oct. 31, 2025).
[38] Press Release: *Attorney General James Sues U.S. Department of Education Over Weaponization of Public Service Loan Forgiveness Program* (Nov. 3, 2025), https://ag.ny.gov/press-release/2025/attorney-general-james-sues-us-department-education-over-weaponization-public.

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any action." We anticipate the Department will update these web resources used by both institutions and borrowers to incorporate the final rule. Institutions may want to monitor these websites as July 1, 2026 approaches.

PSLF Questions

If your organization has questions regarding PSLF qualifying employer status, the PSLF employer reconsideration process, or the PSLF program generally, please contact one of the professionals in Powers Education practice group.

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