



National Legal Aid & Defender Association Recommendations to the Biden-Harris Administration

November 2020

“Research tells us that effective legal representation is the single most important factor in whether victims are able to escape this domestic violence cycle. Yet, studies estimate that less than 1 in 5 low-income victims of domestic violence ever get to see a lawyer.”

- [Vice President Biden](#)
[Commemorating Domestic Violence Awareness Month Event \(Oct. 27, 2010\)](#)

As a former public defender and longstanding champion of civil legal aid, President-elect Biden understands that our civil and criminal legal systems are complex institutions requiring the specialized knowledge of lawyers to navigate. That is why access to legal assistance and representation is so often the difference between a person receiving due process and fair outcomes in court, or experiencing injustice, a violation of their rights, and life-altering consequences.

The Constitution guarantees a right to legal counsel in criminal cases, but this mandate is unfulfilled in many places, as public defender systems lack adequate resources to handle the roughly 80 percent of defendants who cannot afford to pay for a lawyer. In civil matters, the federal government has recognized its role in providing access to counsel since the 1960s, but in recent decades this role has been chipped away by budget cuts and severe operating restrictions.

The COVID-19 pandemic has increased the urgency of the need to strengthen civil legal aid and public defense, as well as other supportive services, has greatly increased while resources to provide services have sharply declined. The ongoing crisis of racial discrimination and injustice, to which the Black Lives Matter movement brought renewed focus this year, is also sustained in part by disparities in access to counsel, and the consequent unfair treatment of people of color by our justice systems.

The Biden-Harris campaign platform demonstrated a strong commitment to the fair administration of justice in our country. The National Legal Aid & Defender Association (NLADA) stands ready to support the incoming administration and all federal agencies to advance that goal and provides these recommended actions that the Biden-Harris Administration can take in its first 100 days to realize this commitment by supporting civil legal aid and public defense:

1. Include Civil Legal Aid and Public Defense Perspectives in Justice System Policymaking
2. Promote the Right to Counsel in Civil and Criminal Matters
3. Increase Federal Resources for the Provision of Civil Legal Aid and Public Defense
4. Lift Rules and Limitations on Federal Programs and Funds that Harm Access to Justice
5. Fix the Department of Education-administered Public Service Loan Forgiveness Program

The National Legal Aid & Defender Association (NLADA) founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating equal access to justice for all. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal aid and public defense services throughout the nation, and provides a wide range of services and benefits to its individual and organizational members. NLADA has more than 700 program members representing more than 15,000 attorneys and tens of thousands more staff who ensure the fair and efficient delivery of legal services in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. NLADA's members include front-line public defenders who fight to uphold their clients' constitutional rights in courtrooms across the country, civil legal aid attorneys who work on a daily basis to ensure that the promise of justice for all is a reality in our civil justice system, and the clients these communities serve.

1. Include Civil Legal Aid and Public Defense Perspectives in Justice System Policymaking

Appoint Public Defenders and Civil Legal Aid Lawyers to Serve as DOJ and Administration Officials

Within the Department of Justice (DOJ) itself, individuals with experience in public defense and civil legal aid, who have a unique understanding of how justice systems affect low-income and underserved people and their communities should be hired within and appointed to positions related to relevant DOJ policy and programs. Among the most important are: the reestablished Office for Access to Justice; leadership offices; the Civil Rights Division; the Criminal Division; the Office on Violence Against Women; and the Office of Justice Programs and its subcomponents, including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the National Institute of Justice.

Specially constituted entities such as commissions or task forces should always include such representation if their focus relates to or affects low-income people. Failure to consider these perspectives contributed to last month's ruling by a federal judge on the Federal Advisory Committee Act that [halted the work](#) of the Presidential Commission on Law Enforcement and Administration of Justice. Public defenders and civil legal aid lawyers should also be considered for other positions across the incoming administration, including the vacancies for the federal branch.

Reopen the Department of Justice's Office for Access to Justice

The Department of Justice Office for Access to Justice (ATJ), established under Attorney General Eric Holder, Jr., was dedicated to promoting access to legal help for low-income people in our civil and criminal justice systems until it was dismantled by the Trump administration in 2017. ATJ helped ensure that DOJ policies reflected the views of public defenders and civil legal aid. It spearheaded work within DOJ and across the Executive Branch to promote access to justice, including through a robust statement of interest practice; marshalling of resources as exemplified by its launching and staffing the [White House Legal Aid Interagency Roundtable](#); representing the U.S. Government in international forums on access to justice to ensure the U.S. experience was reflected in those negotiations; and developing policy guidance such as the "[Dear Colleague Letter](#)" on court fines and fees and [Advisory for Recipients of Financial Assistance on Levying Fines and Fees on Juveniles](#) that were rescinded by the Trump administration.

ATJ should immediately be reestablished in accordance with the functions as set out in 28 CFR § 0.33, and reassume its role as staff to the White House Legal Aid Interagency Roundtable, as [directed by President Obama](#).

Reestablish Lines of Communication between DOJ and the Public Defense Community

DOJ should immediately reconstitute the regular meetings that were held between 2009 and 2016 by DOJ leadership—often including

the Attorney General, Deputy Attorney General, and the Associate Attorney General—on a quarterly or semiannual basis with representatives from roughly a dozen national organizations directly involved in work to improve indigent defense or promote the right to counsel. These meetings provided the DOJ the timely opportunity to hear about developing issues related to current or proposed DOJ actions (like the [DOJ State Capital Counsel Mechanism](#), which reviews state applications to limit the timing and scope of federal habeas review of state capital cases under certain circumstances), as well as public defense, courts, and justice systems as they related to low-income people more broadly.

Ensure Strong Federal Compliance and Coordination in the Enforcement of Civil Rights

The Federal Compliance and Coordination Section of DOJ's CRT is responsible for ensuring

consistent enforcement of Title VI of the Civil Rights Act across agencies and recipients of federal funds and services, and working with respective agencies' Offices for Civil Rights (OCRs) to do so. Classes of people protected by Title VI and served by recipients of federal funding are an overwhelming majority of the clients and communities served by public defenders and civil legal aid. Ensuring nondiscrimination in federal programs and services is critical to access to justice and just outcomes.

The Biden-Harris Administration should revitalize OCRs in all federal entities and ensure DOJ's CRT is working to ensure strong compliance and coordination across all agencies. One area of concern that requires additional enforcement efforts is environmental justice, which disproportionately affects protected classes and low-income people.

2. Promote the Right to Counsel in Civil and Criminal Matters

This year, a [House resolution](#) supporting a right to counsel in civil matters was sponsored by members of both parties. Sometimes described as "Civil Gideon" in reference to the right to counsel in criminal cases established in *Gideon v Wainwright*, it is an important objective to provide guaranteed legal assistance in the full range of settings where basic human needs as outlined in H.R. 960 are at stake and where the legal consequences are life-altering. These include shelter, custody of children, safety from abuse, health, and sustenance. In particular, President-elect Biden should address eviction and immigration within the first 100 days of his administration. These are priority issues, both because current crises necessitate urgent action

and because there are steps that can be taken immediately to meaningfully advance the right to counsel in both areas.

Provide Counsel to All Individuals in Immigration Removal Proceedings

The current maltreatment of immigrants and denial of due process in immigration proceedings represents a human rights crisis in America. Currently, [only around a third](#) of people in removal proceedings are represented by counsel. As a federal enforcement function, the incoming administration will have total jurisdiction over the implementation of removal proceedings. DOJ should immediately promulgate guidance establishing its view that

representation is a requirement in removal proceedings, and urgently begin to provide low-income individuals the effective assistance of counsel at public expense.

The Legal Orientation Programs administered by the Executive Office of Immigration Review, which provide legal information and legal referral services to individuals facing removal, should be made available to every individual in every immigration detention facility to supplement counsel. NLADA strongly supports the American Immigration Lawyers Association recommendations to the incoming administration, [A Vision for America as a Welcoming Nation: AILA Recommendations for the Future of Immigration](#), and specifically Section 6 of those recommendations.

Incentivize States to Establish a Right to Counsel in Housing Court

As a result of the national evictions crisis that was underway even before the pandemic placed millions more Americans at risk of homelessness, a growing number of jurisdictions had established a right to counsel in housing court, recognizing both the disastrous and compounding consequences of eviction and the fact that unrepresented tenants may be more than twice as likely to be evicted. In New York City, for example, a Right to Counsel (RTC) program was established in 2017, and since then the eviction rate has declined [more than five times faster](#) in jurisdictions covered by RTC than those that are

not. The administration should issue a Statement of Administration Policy in support of federal legislation that rewards states that pursue a right to counsel, such as [S.3305/H.R. 5884](#), the Legal Assistance to Prevent Evictions Act of 2020, promoted by President-elect Biden's campaign platform.

As eviction moratoria are routinely violated by landlords, counsel remains a necessary component of pandemic response. Many evictions are also occurring lawfully because relief provided by governments has been insufficient. In addition to supporting a right to counsel, the federal government should strengthen federal eviction moratoria and provide rental assistance for low-income renters. NLADA supports the approach outlined in the National Housing Law Project Memorandum to Candidates, ["End the U.S. Evictions Crisis."](#)

Reestablish an Active Statement of Interest Practice at DOJ

Prior to its dismantling, DOJ ATJ coordinated DOJ policy positions with respect to the Sixth Amendment. Among its most consequential work was identifying cases concerning the right to counsel in which DOJ could file a [Statement of Interest or amicus brief](#) on the constitutional guarantee to the right to counsel. These interventions supported successful litigation that led to major reforms of public defender systems across the country.

3. Increase Federal Resources for the Provision of Civil Legal Aid and Public Defense

Civil Legal Aid

Access to legal help is often the only lifeline preventing a person from experiencing a life-altering event as a result of a civil legal problem that threatens their housing, health, income, or other basic human needs. For example, the Legal Services Corporation [reports](#) that when tenants represent themselves in New York City, they are evicted in nearly 50% of cases. “[w]hen represented by a lawyer, they win 90% of the time,” and “win rates for represented defendants are 10 times those of unrepresented defendants in debt collection cases.”

The prevalence of civil legal problems has increased exponentially since the outbreak of COVID-19, particularly as a result of the evictions crisis, problems with unemployment benefit programs, the growing prevalence of domestic violence, and the particularly severe health and economic effects of the pandemic on Black and Brown communities and Native Americans living in tribal jurisdictions. Even prior to that, roughly [86 percent](#) of civil legal problems experienced by low-income Americans went unaddressed by an attorney.

Budget \$1.36 billion for the Legal Services Corporation

The Legal Services Corporation (LSC) is the single largest funder of civil legal aid in the U.S., accounting for roughly 20 percent of all funding in 2019, and this proportion is likely to increase sharply as other sources of funding are reduced by the pandemic. [Data](#) published by LSC in 2018 found that grantees were able to fully address

fewer than half of the problems brought to them, turning away eligible potential clients because they did not have sufficient resources to assist. In order to be eligible for assistance from an LSC grantee, a person’s household income must generally be lower than 125 percent of the federal poverty level, and the rise in poverty caused by the pandemic has therefore greatly increased the number of people eligible for services.

The FY2020 LSC appropriation level is \$440 million. Last year, NLADA recommended that LSC be funded at a level of \$734.5 million, which we estimated would have enabled its grantees to serve all eligible people seeking help. However, just as the need for legal aid has grown since then, losses to legal aid programs of least [\\$157.4 million](#) are expected this year from Interest on Lawyers Trust Accounts (IOLTA) programs alone, to say nothing about reductions to state and local government budgets. In a June 2020 [memo to LSC](#) that describes these issues in detail, NLADA recommended to LSC that it request \$1.36 billion from Congress for FY2022. The first Biden Presidential Budget should recommend this same amount.

The bipartisan LSC Board of Directors [resolved at its July 28, 2020 meeting](#) to request more than \$1 billion. Any future appointments to the LSC Board should demonstrate the commitment to access to justice reflected in the Legal Services Corporation Act.

Revitalize the White House Legal Aid Interagency Roundtable

Arguably, one of the most impactful activities of the former DOJ ATJ was launching and staffing to the White House Legal Aid Interagency Roundtable (LAIR). Established in 2012, and made permanent by President Obama in 2015 through a [Presidential Memorandum](#), LAIR works to integrate civil legal aid into the social and supportive services provided by federal agencies. New resources for legal aid generated by LAIR amounted to tens of millions of dollars per year.

This integration also increased the efficiency of federal programs related to housing, healthcare, employment, and many other issues that may not appear legal in nature. For example, if a person's health problems are caused by the conditions of their housing, a lawyer who can hold their landlord accountable may be more effective than a healthcare worker who can treat their symptoms. While LAIR nominally continues to exist, it has been stripped of its resources. Staff within DOJ and the White House should be assigned to the task of recreating and then exceeding its prior level of activity, which at its peak engaged 22 federal agencies and departments.

Public Defense

Unlike with civil legal problems, people accused of crimes have a constitutional right to counsel and therefore, if found unable to afford to hire a lawyer, must be provided one at government expense. The overwhelming majority of individuals accused of crime in the U.S. qualify for a public defender. Despite the U.S. Supreme Court affirming the right to a lawyer more than 50 years ago in *Gideon v. Wainwright*, many

states and localities fail to adequately fund public defense systems.

Meanwhile, the federal government has never meaningfully supported state and local public defense. As a result, too many clients are served by committed but overburdened lawyers, denying them the effective representation to which they are entitled. The [inconsistent patchwork of delivery systems](#) has long made access to quality counsel a ZIP code lottery that has been exacerbated by the pandemic, as state and local resources have been depleted, causing defender programs to cut staff just as caseloads have increased due to backlogs created by court closures earlier this year.

Even [prior to the COVID-19 pandemic](#), attorneys were routinely forced to handle excessive workloads that make it impossible to provide reasonable representation, as they may be unable to investigate the facts, effectively prepare for court, or even be present during critical pretrial stages of the case. Deficiencies in resources for defenders also contribute to a pay disparity with prosecutors that deters and sometimes prevents qualified attorneys from taking or remaining in public defender jobs.

Lack of access to quality counsel disproportionately harms Black Americans and other people of color, both because they are more frequently the targets of law enforcement activity due to bias and racial disparities in the system, and because of the racial wealth gap, as people of color who are charged with crimes are less likely to be able to afford to pay for private representation.

Balance the Distribution of Federal Resources Between Public Defense Systems, and Law Enforcement and Prosecution

The current distribution of DOJ grant funds reflects and contributes to the resource disparity between the defense function, and prosecution as well as law enforcement. DOJ has failed to provide any substantial support to improving indigent defense, while subsidizing excessive enforcement activity by state and local police, thereby contributing to racially disparate justice system outcomes and the overuse of incarceration.

The Edward Byrne Memorial Justice Assistance Grants (Byrne JAG) program is the starkest and harmful example of this problem. In 2016, prosecution and indigent defense initiatives *collectively* [made up 6.8 percent of Byrne JAG spending](#), compared to 50.7% for law enforcement. Law enforcement initiatives (including equipment and technology, operations, task forces, and training) received over \$62.8 million, prosecution and court-related initiatives received over \$17 million, whereas indigent defense initiatives received just \$1.8 million, *which is still the largest source of federal investment in public defense*. This is partly because many of the State Administering Agencies of the program have minimal communication with defender organizations and often avoid providing funds for that purpose.

As a first step towards a more equitable allocation of Byrne JAG resources, DOJ should immediately revise its Byrne JAG Program Solicitations to ensure that all open solicitations again explicitly list public defense as a permissible use and include it as an “Area of Emphasis.” More broadly, the Byrne JAG program formula, Justice Reinvestment grants,

other grant programs, and data collection and research programs should be reformed to provide more specific permissible uses that better reflect the needs of communities, with a high proportion directed to public defense as a central priority. NLADA supports the recommendations contained in the Center for American Progress Report, [“Reimagining Federal Grants for Public Safety and Criminal Justice Reform”](#).

Provide Training and Technical Assistance to Tribes, including the Tribal Public Defender Offices on the Right to Counsel

After the passage of the Tribal Law and Order Act of 2010 and the Violence Against Women Reauthorization Act of 2013, the provision of indigent defense services in tribal settings was dramatically altered. DOJ, through ATJ, provided expertise to Tribes, Tribal Public Defender Offices, and federal partners on the right to counsel and encouraged the development of alternatives to incarceration based on traditional practices. This work has all but ceased under the current administration, but should be reestablished quickly in the next.

Issue a Statement of Administration Policy in Support of the Ensuring Quality Access to Legal (EQUAL) Defense Act

In addition to rebalancing existing grant programs, the Biden-Harris Administration should work to establish new programs that improve the fairness of treatment of low-income people and people of color by our state and local justice systems. The Biden-Harris Administration should issue a Statement of Administration Policy in support of the [Ensuring Quality Access to Legal \(EQUAL\) Defense Act](#), when it is introduced in the next Congress.

The EQUAL Defense Act, written and introduced in the Senate by Vice President-elect Harris in 2019, would represent a genuinely historic step towards a more level playing field for low-income defendants. It would authorize \$250 million each year in grants to bring jurisdictions to a baseline minimum standard of public defense quality by reducing state and local public defender workloads, which in many places are so large it is impossible for attorneys to provide reasonably effective representation.

States and local governments and public defender offices would be eligible to apply for funding if they commit to developing and implementing evidence-based workload limits. Existing national workload standards were developed almost 50 years ago and are no longer accurate, so the EQUAL Defense Act would establish robust data collection requirements that will enable jurisdictions to develop guidelines that apply to the distinct features of their specific system.

It would also provide incentives to rebalance the pay disparity between defenders and prosecutors, which harms both the quality of representation and the efficiency of courts, as attorneys cannot afford to remain in public defense positions over the long term and are forced to leave just as they gain enough experience to be effective advocates and handle full caseloads.

Fully Fund the John R. Justice Student Loan Repayment Assistance (JRJ) Program

JRJ provides relief from student loan debt by contributing to an individual's monthly student loan payments, which helps reduce high rates of turnover in public defender and prosecutor offices. However, the FY2020 appropriation for John R. Justice was just \$2 million, whereas the amount authorized for the program is \$25 million. The FY2021 President's Budget should request that Congress fully fund the John R. Justice program.

4. Lift Rules and Limitations on Federal Programs and Funds that Harm Access to Justice

Revise the Restrictions on Legal Services Corporation Grantees' Use of Non-LSC Funds

In 1996, Congress passed an appropriations bill that imposed numerous restrictions on civil legal aid programs that receive LSC grants. As a result, programs were, and continue to be, prohibited from providing help to entire categories of people, who are disproportionately people of color: non-citizens, individuals who are incarcerated, and residents of public housing facing eviction because of alleged involvement with illegal drugs.

Programs are also prohibited from engaging in certain types of advocacy, artificially limiting the tools available to legal services attorneys compared to those with paying clients. This includes a highly inefficient prohibition on class action lawsuits that requires grantees to represent single individuals when a class action could remedy the same problem for multiple people, and a restriction on legislative and administrative representation despite policy change often being the only remedy to a particular problem.

Even more harmful, these restrictions apply to the *entity* receiving the funds meaning any organization receiving grant funds from LSC cannot engage in restricted activities, *even if they are only using funds received from sources other than LSC*. This requirement totally prohibits civil legal aid programs, even those who may receive as little as 10 percent of their budget from LSC grants, from engaging in the entire range of restricted activities.

These restrictions were established at a time when LSC was considered a partisan issue but that is no longer the case. Although political disagreement may continue to exist around specific individual restrictions, there are a number that could potentially be removed with bipartisan support. A potential approach would be for the Biden-Harris Administration to include the same language in its budget proposal to Congress that was included in each of the [Obama-Biden Administration's budgets](#), which would remove the restrictions on non-LSC funds and on using LSC funds to engage in class action litigation:

Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (Public Law 104–134) is amended by (a) striking "to provide financial assistance to" and inserting "by"; (b) inserting "in a manner" after "(which may be referred to in this section as a 'recipient')"; and (c) deleting paragraphs (7) and (13) and renumbering the remaining paragraphs accordingly.

The Biden-Harris Administration should additionally consider requesting that Congress reauthorize the LSC Act, which has not been reauthorized since 1977. This would reaffirm

the commitment of the federal government to access to justice and create an opportunity to address various outdated components of the original act including the structure of the grantee boards, and eliminate some of the restrictions on LSC funds themselves. The [Civil Access to Justice Act of 2009](#), introduced in Congress by Senator Tom Harkin and Representative Bobby Scott, would be a strong starting point for such legislation.

Address the Slate of Regulations and Agency Policies that Have Harmed Low-Income People

Over the past four years, federal agencies have been active in setting policies and using the rulemaking process to weaken protections from discrimination, and establish new policies and regulations restricting access to public services and benefits. The Biden-Harris Administration should work expeditiously to reverse the most harmful of these regulatory and policy changes, including a Department of Housing and Urban Development [rule](#) that created new and severe barriers for people seeking protection from disparate impact discrimination under the Fair Housing Act, and [changes](#) to the adjudication of the public charge inadmissibility test established by the Department of Homeland Security that not only allowed the government to far more easily reject applications for visas and lawful permanent residency on the basis on wealth, but also prevents many individuals and families from seeking and receiving critical relief for which they are eligible.

Rescind the September 22, 2020 Executive Order on Combating Race and Sex Stereotyping

Despite its name, [this Executive Order](#) chills important work to reduce racial injustice and discrimination within federal agencies, contractors, and grantees. Not only is it

important for workplace diversity and inclusion that employees are able to be educated about how contemporary racism is perpetuated, but many individuals affected by this Executive Order are responsible for making decisions with

life-altering consequences for individuals and communities. Training that helps these individuals recognize and mitigate their biases is vital if federal programs are to be administered fairly and equitably.

5. Fix the Department of Education-administered Public Service Loan Forgiveness Program

The Department of Education-administered Public Service Loan Forgiveness (PSLF) Program ensures that talented and committed individuals are not prevented from entering and remaining in legal aid and public defense because of the high debt associated with their law degree. The program makes it possible for organizations to recruit and retain staff at far lower salaries than they would receive in the private sector. In 2017, 87 percent of respondents to an [NLADA survey](#) said PSLF would make them much more likely to accept a job, and more than half said they would be very likely to leave their jobs if PSLF no longer existed.

Although Congress did not act on President Trump's recommendation to eliminate PSLF, the program has functionally ceased to exist for the [98 percent of borrowers](#) who have had their applications for forgiveness denied. The pandemic has made fixing this problem even more urgent, as increased financial instability compounds the pressure to leave public service for a higher-paying job.

Establish Transparent Certification and Appeals Processes

In 2019, a [lawsuit](#) was filed on behalf of eight borrowers claiming they were wrongfully denied forgiveness. The plaintiffs were either denied despite provably meeting all of the

requirements of the program, or given incorrect information by the Department of Education (ED), or one of its contracted loan servicer companies, causing them to select an ineligible loan or repayment plan.

These problems are widespread and exist because ED neither provides clear communication to borrowers nor does it provide a transparent or consistent process for borrowers to appeal inaccurate determinations.

Existing tools on ED's website provide some information to borrowers about the program requirements and application process, but they must be built upon to allow employment certifications to be submitted online, check the status of qualifying payments, and dispute inaccuracies in the count of payments already made.

Disputes over eligibility and qualifying payment status, whether they occur prior to an application for forgiveness or afterwards, should be settled through a timely adjudication process that requires ED to provide the opportunity for a borrower to present evidence, and require the agency to present the reasons for its determination on the record.

Discharge Loans of Borrowers Who Took Disqualifying Action on the Basis of False Information, and Issue a Statement of Administration Policy in Support of the What You Can Do For Your Country Act

ED reports that 14 percent of applications for forgiveness have been denied because the borrower had “no eligible loans”. This refers to borrowers who are excluded because they have certain loan types or are enrolled in certain repayment plans, even those who may be identical to a qualifying borrower with respect to length of time in public service and the amount of their loan they have repaid. The proportion of people affected by this problem is likely to be considerably higher than 14 percent, but the data is not reported clearly.

Since the inception of PSLF, many people have made decisions that have disqualified them from PSLF on the basis of false information provided by ED and its contracted loan servicers about the consequences for PSLF qualification for the loan options available to them. ED should now communicate to borrowers that it will hold them harmless *at least* in circumstances where they were given false information, and discharge the balance of their loans after 10 years in public service.

H.R. 2441/S.1203, the What You Can Do For Your Country Act, would close the technical loopholes that are the origin of these problems and provide relief to borrowers who, while not given false information, also made disqualifying technical decisions while meeting the other conditions required for forgiveness. It would make all federal loans eligible for forgiveness and qualify borrowers in extended and graduated repayment plans, which are currently ineligible. The Biden-Harris Administration should issue a Statement of Administration

Policy in support of the What You Can Do For Your Country Act or similar legislation in the next Congress.

Congress attempted to address the latter issue in 2018 by establishing the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program, but this approach is not sufficient, not only because the TEPSLF denial rate higher than 90 percent, but also because TEPSLF requires an appropriation and is therefore forced to operate on a first-come, first-served basis until its limited funding is exhausted.

Clarify that Public Defenders in Assigned Counsel and Contract Systems Are Eligible for PSLF

In places where public defense services are provided by a 501(c)3 organization, or where attorneys are employed by a state or local government directly, public defenders are currently able to earn forgiveness. However, many attorneys representing indigent clients on a full-time basis work within systems in which they are compensated directly by courts on an hourly or flat fee per case basis, or by an organization that is not a 501(c)3 but that is contracted with a court to provide these services.

It is nonsensical that individuals providing the same constitutionally-mandated service should be excluded on the sole basis of the structure of the public defender system in their jurisdiction. There is no requirement in the [law that created PSLF](#), which also explicitly includes “public defense” as an eligible public service job, that these individuals be excluded.

The same is true for others providing services specifically contemplated in the statute, including but not limited to "public interest law

services." ED should make any necessary changes to the administration of the program to rectify this problem.

Eliminate the Requirements that a Borrower Must Be Employed in Public Service When They Apply for and Receive Forgiveness

Nonprofit organizations are experiencing extreme financial pressure and unemployment remains at historic levels, making it likely that

some individuals have reached or will reach eligibility for forgiveness before subsequently being laid off. The current requirement, under 34 CFR § 685.219, that an applicant who has already completed 10 years of public service must be employed in a qualifying job at the time they submit their application and when the remaining balance is forgiven will deny many borrowers the relief they have earned at the same time as they lose their income.

The National Legal Aid & Defender Association looks forward to collaborating with the Biden-Harris Administration to ensure that federal programs and activities deliver on the nation's promise of justice for all.