



September 17, 2025

Office of Postsecondary Education
United States Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Submitted electronically via <http://www.regulations.gov>

Re: William D. Ford Federal Direct Loan (Direct Loan) Program
FR Doc. 2025-15665; Document ID: ED-2025-OPE-0016-7221

The National Legal Aid & Defender Association (NLADA) respectfully submits this comment in response to the U.S. Department of Education's (Department) efforts to revise the Public Service Loan Forgiveness (PSLF) Program, enacted as part of the College Cost Reduction and Access Act of 2007 (CCRAA).

This comment specifically addresses proposed language that is intended to restrict qualifying employer status for purposes of PSLF even for entities classified as government or nonprofits. The sole purpose of legal services, both civil and criminal is to fulfill the American ideal of Equal Justice Under Law, etched into the façade of the United States Supreme Court. However, the proposed language has sent a chill throughout the NLADA community, described in detail below, and if adopted would be devastating for the millions of low-income Americans in every county of the country who rely on these services to live safe and stable lives.

I. Statement of Interest and Significance of PSLF in Supporting American Communities

NLADA, founded in 1911, is America's oldest and largest national nonprofit organization dedicated to the excellence in the delivery of legal services for people who cannot afford to pay for counsel, devoting all of its resources to advocating for 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 systems throughout the nation, and provides a wide range of services to support advocates for equal justice. NLADA has more than 700 organizations that collectively represent thousands of attorneys and advocates who provide civil legal aid and public defender services to low-income and underserved individuals in the 50 states, the District of Columbia, American Samoa, Micronesia, Puerto Rico, and the U.S. Virgin Islands. Notably, NLADA also counts among its members and in its governance structures representatives from the client communities served by these providers, and who are most impacted by the access to justice crisis in this country.

Civil legal aid ensures that regardless of how much money a person has, they have the same level of access to a fair adjudication of their civil legal problems as anyone else. They provide legal help that enables people to protect their livelihoods, their health, and their families. Public defenders fulfill the constitutional right to counsel; they are essential to due process and our concept of liberty. They protect the rights of defendants in criminal cases and work to ensure that case outcomes are fair and just.



Legal services is a fundamental public service. Taxpayers benefit from the availability of legal aid and public defense. Three out of every four low-income households experience at least one civil legal problem per year, including consumer issues, health care, housing, and income maintenance.¹ Fifty-five percent of low-income Americans who experienced a civil legal problem said these problems substantially impacted their lives, including by affecting their finances, mental and physical health, safety, and relationships.² Roughly 80 percent of people who are accused of crimes rely on public defenders because they cannot afford to pay private defense attorneys.³

PSLF makes it possible for civil legal aid and public defender programs with limited budgets to recruit and retain committed professionals, who can accept lower salaries even when the comparatively high cost of obtaining a law degree means many are graduating law school with significant debt. It also makes these jobs more accessible to students who otherwise may not have the means to afford the required education and training to enter the legal field, work in public service and provide stability for their families.

At its core, NLADA's community of legal advocates ensures that even the "little guy" has a fair chance, ardently pursuing all legal avenues on behalf of their clients. The proposed rule would significantly weaken both the availability and quality of legal representation in all regions of the country.

II. Response to the Department's Proposed Revisions

NLADA's concerns and objections to the proposed language fall into three categories:

1. The substantial chilling effect on legal services created by the proposal to "exclude any organization that engages in activities that have a substantial illegal purpose from being a qualifying employer for the purposes of the PSLF program," and the ways in which the Department might determine the presence of a "substantial illegal purpose;"
2. The lack of meaningful due process in the Department's determination that an employer's activities have a "substantial illegal purpose" and for the affected employer to contest that determination; and most importantly,
3. The harm to the provision of civil legal aid and public defense service providers and the low-income communities across the country who need these services.

1. *The proposed language creates a substantial chilling effect that undermines the provision of civil legal aid and public defense.*

Civil legal aid and public defenders protect the rights of low-income people when they are charged with crimes, and help secure basic necessities like safe housing, education, employment, health care, and safety from violence.

¹ LEGAL SERVS. CORP., THE JUSTICE GAP: THE UNMET CIVIL NEEDS OF LOW-INCOME AMERICANS 8 (2022), <https://justicegap.lsc.gov/the-report>.

² *Id.*

³ Leonard Willis, *Access to Justice: Mitigating the Justice Gap*, AM. BAR ASS'N (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/resources/newsletters/minority-trial/access-justice-mitigating-justice-gap>; CAROLINE WOLF HARLOW, BUREAU OF JUST. STATS., OFF. OF JUST. PROGRAMS, U.S. DEP'T OF JUST., NCJ 179023, DEFENSE COUNSEL IN CRIMINAL CASES 1 (2000), <https://bjs.ojp.gov/content/pub/pdf/dccc.pdf>.



To be clear, legal services providers are not engaged in illegal activity. Civil legal aid and public defenders provide legal representation and advocacy to ensure constitutional rights are provided to people even when they cannot afford to pay. These providers strive to ensure that the ideal of equal justice under law lives not only in the dream of our founding fathers, but nearly 250 years later, in reality, for millions of Americans.

The nature of providing ardent legal advocacy regularly requires civil legal aid and public defenders to challenge the actions of large corporations, government entities, and other powerful interests on behalf of everyday people. In so doing, they are truly the last line of defense for many people who have no other access to legal assistance.

Our communities deserve nothing less. Our Constitution demands nothing less. However, the proposed rule leaves open too large of a possibility that this type of advocacy could be found to have a “substantial illegal purpose,” and will result in a drastic decrease in the availability of critical legal services to individuals most in need.

The proposes to include in the definition of “substantial illegal purpose:”

- a) “aiding or abetting violations of 8 U.S.C. 1325 or other Federal Immigration Laws;”
- 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;”
- c) “engaging in the chemical and surgical castration or mutilation of children in violation of Federal or State law” and “engaging in the trafficking of children to states for purposes of emancipation from their lawful parents in violation of Federal or State law;”
- d) “engaging in a pattern of aiding and abetting illegal discrimination;” and
- e) “engaging in a pattern of violating State laws,” which is then defined 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.

NLADA outlines below its overall concern regarding the vagueness and overbreadth of the proposed rule’s prohibitions, as well as the substantive effect of each individual element.

As currently drafted, these provisions are ill-defined, vague, overbroad, and risk undermining the very purpose of the PSLF program by discouraging or excluding essential public service professionals.

The terms “illegal activity,” “activities with a substantive illegal purpose,” and “aiding and abetting” are left to be overly broad and subject to expansive interpretation. It is also unclear whether a “pattern” of violating state law might be found simply based on the actions of employees regardless of employer policy. NLADA and its members are concerned that absent clear limiting principles, these provisions could sweep in conduct that is an inherent part of legitimate and constitutionally protected legal work.

Public defenders represent individuals accused of crimes every day, and civil legal aid attorneys often advise or defend clients in matters arising from alleged violations of the law. They also work with



individuals who may be uncertain as to their immigration status or wish to contest their immigration status.

Moreover, and notably, legal advocates often advocate for changes in and different interpretations of existing law. This is a fundamental pillar of the American justice system – an adversarial process designed to uncover truth and advance fairness. Far from promoting unlawful purposes, this work is essential to ensuring the constitutional rights of due process and equal justice. The Sixth Amendment guarantees the right to counsel for those accused of crimes,⁴ and civil legal aid is often the only access to representation available for low-income individuals facing eviction, domestic violence, or loss of public benefits. Any rule that penalizes such service runs directly contrary to these constitutional guarantees and American ideals.

However, the vague and overbroad nature of these provisions would have real and harmful consequences for access to justice, and the NLADA community already is experiencing fear and hesitation resulting from the proposed language.

PSLF is one of the few tools available to recruit and retain talented and passionate attorneys in these critically underfunded and overburdened sectors. Public defense systems nationwide already are in crisis: a 2022 report by the American Bar Association concluded that the United States has only 21% of the public defenders it needs to meet constitutional requirements.⁵ Civil legal aid is similarly under-resourced, with the Legal Services Corporation reporting in 2022 that 92% of low-income Americans receive inadequate or no legal help for their civil legal problems.⁶ Creating doubt about access to PSLF is exacerbating these shortages, leaving even more individuals and communities without access to justice.

Moreover, even those who choose to continue to deliver this critical public service are chilled in the level of advocacy they might provide. The rule as written creates uncertainty in both meritorious cases to pursue and legitimate legal arguments to make, for fear of running afoul of PSLF rules.

This point was raised to some extent among the negotiated rulemaking committee, as the Department acknowledges:

Another negotiator stated that many legal aid organizations with 501(c)(3) status work with undocumented clients and feared losing qualifying employer status due to the Department's determination that they are aiding and abetting violations of Federal immigration laws.

As a result, the Department provides the following assurance (in subsection (h)(2)):

Nothing in this subsection shall be construed to authorize the Secretary to determine an employer has a substantial illegal purpose based upon the employer or its employees

⁴ Gideon v. Wainwright, 372 U.S. 335 (1963).

⁵ Am. Bar Ass'n Standing Cmtee. on Legal Aid & Indigent Def., The Public Defender Crisis in America (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-defender-crisis.pdf.

⁶ Legal Servs. Corp., The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans (2022), <https://lsc.gov/our-work/publications/other-publications-reports/justice-gap-report>.



exercising their First Amendment protected rights, or any other rights protected under the Constitution.

NLADA is greatly appreciative of the Department's intent to safeguard constitutional rights. However, the proffered language is inadequate in protecting the breadth of legal representation required to protect the ideals and ensure the fair operation of the American justice system. As noted above, providing legal assistance can require advocates to challenge legal doctrines and represent individuals who may be alleged to have engaged in unlawful behavior. In assisting, advising, and/or representing those individuals, these advocates are not aiding or abetting any alleged behavior but instead are helping to protect the critical constitutional right of due process.

PSLF was created to strengthen public service by supporting the recruitment and retention of professionals in roles that benefit the public good. Notably, public interest law services is explicitly enumerated in the CCRAA. Any final rule must make this clear and explicitly state that the provision of legal representation, advice, or advocacy in any instance shall not be used as a basis for revocation of employer's qualified status. Anything less would directly undermine the clear congressional intent of PSLF: to further our nation's ability to have a strong, sustainable public service workforce that meets the needs of communities across the country.

Language permitting disqualification from PSLF for aiding or abetting violations of immigration laws inhibits and interferes with delivering lawful legal services.

The rule's prohibition on "aid[ing] or abet[ing] violations of 8 U.S.C. § 1325 or other Federal immigration laws" is specifically concerning. The language is so broad that it risks being construed to cover the ordinary functions of legal representation, such as advising clients on the potential consequences of past conduct, ensuring they understand their rights, guiding them through proceedings arising from alleged unlawful acts, or simply pursuing legal avenues to adjust immigration status.

NLADA is concerned that the proposed language leaves open the possibility of an interpretation that conflates constitutionally protected legal representation with "aiding or abetting" unlawful conduct. To be clear, such an interpretation misapplies the term, but the proposed language makes such a misapplication all too easy. And in doing so, it has, even before any interpretation or application, created a harmful chilling effect on the ability of attorneys to fully and zealously represent their clients. Courts have long recognized that robust advocacy, even when on behalf of unpopular or accused individuals, is protected activity essential to the functioning of the American justice system.⁷ The proposed rule undermines the essential activities of critical public defense and civil legal aid providers.

The proposed rule's enumeration of "supporting terrorism" as a disqualifying activity is vague, overbroad, and chills lawful public defense and legal aid services.

The proposed rule's framing of the prohibition on "supporting terrorism" also chills the provision of civil legal aid and public defense.

Both "supporting" and "terrorism" are ill-defined terms subject to broad interpretation that borrowers and their employers could reasonably infer would be subject to arbitrary determinations. The scope of

⁷ NAACP v. Button, 371 U.S. 415 (1963).



the term “supporting” is not defined in the proposed rule. The language notes that “supporting terrorism” includes “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.” The proposed rule’s reference to the definition of “terrorism” in 18 U.S.C. § 2331 leaves the potential of interpretation very open to the Department’s discretion, causing uncertainty among low-income legal services providers, and chilling their activities and services.

The term “terrorist” often has not been narrowly employed. It even has included a special prosecutor overseeing a criminal investigation.⁸ Indeed, remarks by the Vice President and a senior White House official just this week imply that non-governmental organizations whose policies do not align with the current administration’s policy likely would be designated as “terrorist” organizations.⁹ Further, exercising First Amendment free speech rights also has been referred to as “support[ing] terrorism,”¹⁰ as has been simply belonging to certain heritages.¹¹

As a result, legal advocates understandably fear they may be labeled as “terrorists” with accompanying legal consequences, and uncertainty about which groups or countries that the federal government may designate as “terrorist,” particularly in light of the lack of an appeals process for employer disqualification, is likely to have an even broader chilling effect on legal services.

Likewise, the vague reference to “supporting . . . violence for the purposes of obstructing or influencing Federal Government policy” hinders the provision of legal services. The rule leaves unclear the scope of the definition of “violence.” As noted above, legal advocates often seek to change government policy to be more just and fair. In the course of legal representation, advocates may seek to protect the rights of a client who is subject to immigration enforcement or seek to mitigate the collateral effects of a Free Speech arrest. The proposed language leaves too open the possibility of arbitrary determinations of “violence.”

The proposed rule’s prohibition on “illegal discrimination” hinders the provision of legal services and lawful practices in recruitment and retention.

⁸ Ewan Palmer, *Donald Trump Calls Special Counsel Investigating Him a ‘Terrorist’*, Newsweek (Jan. 13, 2023, 4:34 PM PST), <https://www.newsweek.com/donald-trump-special-counsel-jack-smith-terrorist-1773489>.

⁹ See Vice President JD Vance Remembers Charlie Kirk, The Charlie Kirk Show (Sep. 15, 2025), <https://thecharliekirkshow.com/podcasts/the-charlie-kirk-show/vice-president-jd-vance-remembers-charlie-kirk>; Joey Garrison, *Trump Officials Vow Crackdown on Left-Leaning Groups After Charlie Kirk Killing*, USA Today (Sep. 15, 2025), <https://www.usatoday.com/story/news/politics/2025/09/15/trump-plans-crackdown-on-left-wing-groups-after-charlie-kirk-shooting/86166121007>.

¹⁰ Donald J. Trump (@realDonaldTrump), Truth Social (Mar. 10, 2025, 12:05 PM), <https://truthsocial.com/@realDonaldTrump/posts/114139222625284782> (“We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the Trump Administration will not tolerate it. Many are not students, they are paid agitators. We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again. If you support terrorism, including the slaughtering of innocent men, women, and children, your presence is contrary to our national and foreign policy interests, and you are not welcome here.”); see also Anna Betts, *Trump Calls Arrest of Palestinian Activist Mahmoud Khalil ‘First of Many to Come’*, Guardian (London) (Mar. 10, 2025, 2:12 PM EDT), <https://www.theguardian.com/us-news/2025/mar/10/trump-arrest-palestinian-activist-mahmoud-khalil>

¹¹ See, e.g., Shayan Sardarizadeh, Merlyn Thomas, Jake Horton & Mike Wendling, *What We Know About Kilmar Abrego Garcia and MS-13 Allegations*, BBC (Apr. 30, 2025), <https://www.bbc.com/news/articles/c1k4072e3nno>.



Lack of clarity in the definition of “illegal discrimination” coupled with sanctions for engaging in “illegal discrimination” have created significant challenges to legal services providers and the proposed rule perpetuates this challenge. While Executive Orders 14151 and 14173, new federal grant terms and conditions, and a U.S. Department of Justice memo providing guidance on unlawful discrimination all make clear that efforts to hire and retain a diverse workforce consistent with Diversity, Equity, and Inclusion (DEI) principles may be considered unlawful by the executive branch, courts have not endorsed such a broad prohibition. Notably, legal services providers also are bound by rules of ethics prohibiting discrimination. As a result, employers sit with the dilemma of the law of the judicial branch contradicting the enforcement practices of the executive branch. This is a perilous and paralyzing place to be for an employer.

Civil legal aid and public defenders do not represent people based on identifying characteristics – they provide legal services based on strict income guidelines and a determination that an individual cannot afford to pay for a lawyer. They operate in every geographic area of this country, and their client population is as varied in demographic and geographic background as this country. As a result, civil legal aid, public defenders, and their clients recognize the value of working with people from different backgrounds, who bring different experience, and who can share different perspectives. These goals are not unlawful, but the uncertainty of whether this will disqualify them as eligible employers for PSLF is real.¹² Efforts by legal aid and public defender employers to address the real challenges delivering quality and trusted legal services risk being characterized as impermissible use of protected characteristics.”¹³ They are chilled both from delivering services to people in need, as well as hiring people to deliver those services.

Proposed language setting forth “patterns of violating state laws” hinders the provision of lawful legal services.

As noted above, civil legal aid and public defenders provide the ultimate public service – ensuring fairness and equal justice under law, regardless of how unpopular a client may be. The proposed language regarding patterns of violating state laws however is so broad and vague that it creates fear and uncertainty regarding the specialized representation of people who may be accused of the enumerated activities, and even individuals accused of similar crimes multiple times.

If the legal advocates committed to helping protect people’s rights are afraid to do so because they risk losing the ability to work in a place that helps them satisfy their loans, they will stop doing so. Without public interest legal advocates working to protect individual rights to counsel and to due process, our communities lose the people who fight to secure access to safety, stability and justice.

2. *The proposed rule lacks meaningful due process protections for employers deemed to be “engaging in activities with a substantial illegal purpose.”*

The proposed rule lacks sufficient due process protections both in the procedure that the Department undertakes for determining that an employer is ineligible under the proposed rule, as well as in the lack of opportunity for reviewing and reversing a determination that an organization is not eligible for PSLF.

¹² Memorandum from Pam Bondi, U.S. Atty. General, on Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025), <https://www.justice.gov/ag/media/1409486/dl>.

¹³ *Id.*



The proposed rule sets low and unclear standards for how the Department decides that an employer has engaged in “activities with a substantial illegal purpose” and thus is ineligible to certify employment for the PSLF program. The language as written does not define the scope of what evidence can be held against an employer. Based on the framing of the proposed rule, employers reasonably fear that the Department could disqualify them from the PSLF program on the basis of an anonymous social media post or an unsubstantiated accusation.

Also of concern is the proposed “preponderance of the evidence” standard for the Department’s decision, which is a low evidentiary standard beneath the more rigorous and longstanding “clear and convincing evidence” and “beyond a reasonable doubt” standards utilized in determining violations of law.¹⁴

This lack of clarity is particularly concerning given the lack of due process for employers to respond to a disqualification under the proposed rule. An employer found ineligible must either wait 10 years to be reconsidered, which would functionally shutter many low-income legal services providers given their dependence on PSLF to attract and retain attorneys and staff, or else submit to a “corrective action plan” dictated by the Department. The potential scope of a corrective action plan is unclear, as is the extent to which it may interfere with delivery of services. The proposed rule does not provide an alternate path for employers to reverse an adverse determination.

3. *The continued eligibility of civil legal aid and public defense service providers as PSLF-eligible employers is critical to these providers, their employees, and the communities they serve.*

The continued functioning of PSLF is critical to the ability of legal aid organizations and public defense service providers to do their jobs effectively and keep our court systems efficient and accountable. The PSLF program works, and it is essential to ensuring that people across the country – in rural, suburban, and urban areas alike – can access the justice system, enjoy the benefits they have earned, and protect their liberty. The PSLF program, which was signed into law by a Republican president and has bipartisan legislative support, strengthens communities in all parts of the country, especially in rural areas where civil legal aid organizations, public defender offices, and other public service entities rely on PSLF to recruit and retain staff. The climbing expenses of higher education, particularly law school and other graduate programs, would make it impossible for many to work lower-paying public service jobs in rural areas if not for PSLF making it financially feasible to serve more isolated communities.

Without a path to student loan forgiveness through PSLF with affordable payment options through Income-Driven Repayment (IDR), civil legal aid and public defense would not be financially viable career paths for many lawyers, social workers, and other support staff who are essential to the delivery of these services. Without PSLF and IDR, countless veterans, seniors, and wrongfully accused individuals would not have the legal assistance to navigate complex court systems, present their arguments in a concise and timely manner, and have a fair chance at limiting overreach by government entitlement programs, regulators, and prosecutors.

¹⁴ See, e.g., Ron Spears, *Burdens of Proof*, 95 Ill. Bar J. 604 (2007), <https://www.isba.org/ibj/2007/11/burdensofproof>.



Civil legal aid and public defense providers bear the responsibility of helping individuals going through the hardest times of their lives to succeed against otherwise narrow odds, and for many, that service is only possible through PSLF.

Given the role of PSLF in the ecosystem of low-income legal services, the chilling effect created by the proposed rule substantially disrupts and harms the nonprofit organizations and government entities that provide these services, the borrowers and others who are employed at these service providers, and the clients and communities who rely on these services.

Most notably,

- PSLF is critical to low-income legal services providers' attorney and staff recruitment and retention efforts;
- PSLF is essential for borrowers to pursue careers in low-income legal services;
- PSLF is important to the protection of constitutional rights; and
- The revocation of low-income legal services providers' PSLF eligibility would harm low-income clients and communities who receive and depend on these services.

Each of these components is discussed further below.

PSLF is critical to recruitment and retention of committed staff to provide quality legal services.

Civil legal aid and public defense providers rely on PSLF to attract personnel (including both attorneys and non-attorneys) to relatively low-paying positions. In 2017, NLADA published the results of a survey of over 3,000 individuals working in civil legal aid and public defense to understand better the importance of PSLF for provision of legal services to those who cannot afford counsel.¹⁵ That survey found that 71 percent of respondents who were the top executive at their organization considered PSLF to be a highly important tool for retaining experienced staff, and almost two-thirds believed it was important for attracting new hires.¹⁶

One leader of a public defense service provider in Pennsylvania reported:

PSLF is not just about relieving individual debt—it is about ensuring that critical public institutions, such as public defense, can attract and retain the skilled professionals our communities depend on.

Eliminating PSLF [eligibility] would devastate our ability to recruit and keep talented staff, especially as many positions already offer far lower pay compared to the private legal sector. For many public defenders PSLF is the only way to make a long-term commitment to public service possible while managing the crushing cost of higher education.

PSLF is central to student loan borrowers' ability to pursue careers in low-income legal services.

¹⁵ NLADA, PUBLIC SERVICE LOAN FORGIVENESS AND THE JUSTICE SYSTEM: HOW ELIMINATING PSLF WOULD HARM AMERICAN COMMUNITIES (2017), <https://www.nlada.org/pslf-and-justice>.

¹⁶ *Id.*



A substantial portion of individuals working in low-income legal services would not be able to pursue careers in public service without PSLF. Experienced attorneys and staff would have less incentive to stay in these careers if their employers' eligibility for PSLF were revoked. NLADA's survey found that:

- 81 percent of respondents who were aware of PSLF at the time that they started their current position said that they were significantly influenced by the promise of loan forgiveness, and 51 percent indicated that they were not likely or certain not to have taken their positions if PSLF had not existed, with 30 percent saying they were only somewhat likely to have taken their positions.¹⁷
- More than half of respondents said they would be very likely or certain to leave their jobs if PSLF did not exist.¹⁸
- Many respondents indicated that PSLF is the only reason they can afford to remain in public service and also look forward to home ownership, starting a family, or saving for retirement.¹⁹

The PSLF program plays a central role in the protection of constitutional rights.

The continued availability of PSLF to those working in public defense roles is essential to the protection of constitutional rights. Public defense service providers are key to maintaining the Sixth Amendment right to counsel for people in criminal court who cannot afford to hire a private lawyer. Approximately nine out of every ten people accused of a crime cannot afford an attorney and rely on public defense services to protect their rights in court. Civil legal aid providers ensure that individuals and families across the country can live safe and stable lives, and are not stripped of basic necessities like education, employment, housing and safety from violence without due process. Indeed, judges, prosecutors, and opposing counsel agree that these servants ensure the fair administration of justice.

This is the penultimate public service, and offices and organizations that provide these services rely on PSLF to bring in and keep talented attorneys and staff. Providers across the country historically have been faced with steep challenges in attorney and staff recruitment and retention, especially in rural communities. PSLF is one of the few incentives these organizations can offer to compete with the private sector.

The proposed rule will harm low-income communities nationwide.

Low-income communities in every corner of the country depend on civil legal aid and public defense and will suffer needlessly if PSLF eligibility is restricted in the manner proposed. Millions of people each year have criminal or civil legal issues and need legal assistance to navigate the court system.²⁰ The proposed rule is instilling fear in public servants willing to provide these services, chilling them from serving in these roles, and, moreover, affecting the level of advocacy they might provide. This reduces both the availability and quality of services and severely undermines justice in this country.

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ *Id.* at 6.

²⁰ See *Every Three Seconds: Emerging Findings*, Vera Inst. (2019), <https://www.vera.org/publications/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds/findings> (noting that there are approximately 10.5 million arrests every year, not accounting for demands on civil legal aid providers).



Conclusion

There is no doubt the proposed rule will make employment in public interest law less feasible for more people, thus exacerbating the already enormous gap between availability of civil legal aid and public defense services and low-income communities' demand for those services.

While this chilling effect created by the proposed rule affects both employers and employees, most importantly, it will hinder the availability and level of legal advocacy people are willing to provide and undermine the fair administration of justice, and this country's promise of equal justice, leaving millions to fend for themselves and slay goliath on their own, simply because they cannot afford an attorney.

As detailed above, the proposed rule creates substantial fear that nonprofit organizations and government entities that provide low-income legal services may be disqualified from PSLF eligibility. This is true regardless of specialization in any specific type of law or client population served. Indeed, the head of a veterans' civil legal aid program reported:

[We] provide free civil legal services to low-income veterans ... Much of our work is done in partnership with VA Healthcare ... as part of a medical-legal partnership to address the social determinants of health, and our practice areas include housing issues (eviction defense, conditions issues, fair rent commission hearings, and discrimination); consumer debt defense; child support enforcement; public benefits (SNAP, TANF, state administered general assistance); and assistance with VA benefits, including representation before the Veterans Benefits Administration adjudicators and Court of Appeals for Veterans Claims, and assistance with military discharge upgrade applications. In addition, we conduct research to investigate questions and concerns regarding systemic problems. Our clients are the low-income veteran population of Connecticut.

[We] ha[ve] a staff of 23, including 13 attorneys and 10 support staff. Our annual budget is approximately \$2.3 million dollars, which goes almost entirely to pay for staff. Our attorneys have specialized knowledge in veteran law, housing law, and public benefits law. All attorneys working ... must have a JD from an accredited law school and be admitted to the State Bar. Most of our attorneys have practiced in excess of 15 years. Our paralegals have experience in assisting attorneys with cite checking, filing papers with the courts and the administrative hearing offices, collecting military and medical records, and other such duties. Additionally, we have a data analyst with a master's degree in political science and research techniques. Our staff includes 3 military veterans.

At least 6 members of our staff have used or are currently enrolled in public service loan forgiveness (PSLF). Several of those currently enrolled have indicated that if it were not for PSLF, they are not sure they could have afforded to work for a legal services program. One young attorney whose spouse helped her pay for law school commented, "If I did not have the assets to pay my own way through law school in order to work in public interest, I would have had to rely on PSLF. The sole reason I went to law school was to serve as a public interest lawyer, so under the proposed rule and in circumstances where



I would need PSLF, I can confidently state I would not have gone to law school at all, as the risk of debt would be too high.”

The vagueness of the definitions in the proposed rules have caused concern that even our program, which serves veterans and thus should be considered politically neutral, could be deemed ineligible for PSLF. If [we] were to lose eligibility, I would not be surprised if some of those staff members who rely on PSLF look for work in the private sector. Some have even told me that would be their plan.

If the rule goes into effect, [we] may have difficulty finding sufficient staff to continue our current level and quantity of legal services to veterans in Connecticut.

[Emphasis added]

NLADA is hopeful the Department will consider the chilling effect of the proposed language on the communities served by civil legal aid and public defenders, and the ways in which it undermines justice and fairness, as well as safety and stability for people in every corner of the country. NLADA urges the Department to preserve PSLF as it exists, without revision, and according to the employer definitions as set forth in the CCRAA.

We greatly appreciate your consideration of these comments and are happy to provide any additional information as you consider PSLF.

Respectfully submitted,



Radhika Singh
Vice President, Civil Legal Services & Strategic Policy Initiatives
r.singh@nlada.org | 202-452-0622

