Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Public Service Loan Forgiveness: Recent Legal Developments

Updated August 31, 2026

For nearly 20 years, Section 455(m) of the Higher Education Act of 1965 (HEA), as amended, has authorized a benefit for borrowers of federal Direct Loan program student loans commonly known as Public Service Loan Forgiveness (PSLF). First established by the College Cost Reduction Act of 2007 (CCRA), the PSLF program requires the Secretary of Education (Secretary) to cancel the outstanding loan balance of borrowers who have pursued public service. To receive this benefit, a borrower must have made 120 monthly loan payments under a qualifying repayment plan. A loan payment counts toward PSLF forgiveness if the borrower made the payment while employed in a "public service job." The borrower must also hold a "public service job" when applying for forgiveness.

The statutory category of "public service job" is thus key to administering the PSLF program. Congress did not leave the term undefined. In the CCRA and a 2008 amendment, it defined "public service job" to mean a full-time job in one of 18 categories, ranging from emergency management and law enforcement to employment with a nonprofit organization described in Internal Revenue Code Section 501(c)(3) (501(c)(3) organization).The Secretary has promulgated agency rules that further elaborate on elements of the statute's definition. The regulations have long specified, for example, that a "borrower may obtain loan forgiveness" under the PSLF program if, among other things, they make the requisite number of qualifying monthly payments while working for a "qualifying employer." The rule's "qualifying employer" category, in turn, has long included governmental agencies, Section 501(c)(3) organizations, and nonprofit organizations that provide a nongovernmental public service, such as early childhood education, to name a few, with added detail about program eligibility (e.g., when employment counts as "full-time" employment). Through April 2026, the Department of Education (ED) provided forgiveness to approximately 1.254 million borrowers, totaling $93.4 billion in student loan debt, under PSLF and its related programs.

On October 31, 2025, Secretary of Education Linda McMahon added a further element to PSLF eligibility by amending ED's agency rules for the program (the 2025 final rule). The Secretary's rulemaking responds to a March 2025 executive order directing her to make program changes that meet President Trump's objectives for PSLF. President Trump stated that prior ED leadership had used the PSLF program to direct tax dollars to "activist organizations that not only fail to serve the public interest, but actually harm our national security and American values, sometimes through criminal means." He ordered that the PSLF program be administered so that "individuals employed by organizations whose activities

Congressional Research Service

https://crsreports.congress.gov

LSB11472

have a substantial illegal purpose" would not be eligible for loan forgiveness. The 2025 final rule implements this policy by amending the PSLF program's rules to deny "qualifying employer" status to an entity that the Secretary finds has a "substantial illegal purpose."

Within days of its publication, the Secretary's final rule drew legal challenges from organizations that employ or represent borrowers who may be affected by the rule. One set of Plaintiffs litigated their claims in the U.S. District Court for the District of Massachusetts (the Massachusetts federal court), while another set of Plaintiffs filed suit in the U.S. District Court for the District of Columbia (the D.C. federal court). On June 30, 2026, one day before the rule was set to take effect, both district courts entered final judgment against ED vacating the final rule. On August 27, the Secretary appealed both judgments.

The litigation raises legal questions concerning the Secretary's statutory authority to withhold PSLF benefits from individuals employed by entities that she determines to have a substantial illegal purpose. This Legal Sidebar examines those questions by describing the 2025 final rule's "substantial illegal purpose" eligibility criterion. The Sidebar then canvasses the Secretary's statutory arguments in support of the test and the Plaintiffs' opposing viewpoints. It explains the district courts' rationales for vacating the rule. The Legal Sidebar concludes by noting Congress's options for addressing these recent PSLF program developments if desired.

ED's PSLF Framework

PSLF's implementing regulations appear at 34 C.F.R. § 685.219. The rule begins by declaring the program's purpose of "encourag[ing] individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section."

Section 658.219(c) defines borrower eligibility for PSLF forgiveness, stipulating that a borrower must not be in default on the loan for which forgiveness is sought, must have made 120 qualifying monthly payments while employed full-time by a "qualifying employer," and must be employed by such an employer when applying for PSLF benefits.

As noted above, the 2025 final rule adds a new regulatory criterion, substantial illegal purpose, upon which access to PSLF benefits could turn. Under the rule, an employer has a substantial illegal purpose if the employer

- aids or abets violations of federal immigration law;
- supports terrorism through various means;
- engages in the unlawful "chemical or surgical castration or mutilation of children";
- participates in the unlawful interstate trafficking of children with the aim of emancipating them from their lawful parents;
- carries out a "pattern of aiding or abetting illegal discrimination"; or
- has a pattern of violating state laws proscribing trespass, public nuisance, vandalism, and similar offenses, as demonstrated by a state court's final, nondefault judgment.

The Secretary's decision that an employer has a substantial illegal purpose would have two related effects, both of which serve to limit borrower eligibility for PSLF relief. First, the 2025 final rule explains that an employer is a "qualifying employer" only if, among other things, it does not "engage in activities such that they have a substantial illegal purpose." An employer judged to have a substantial illegal purpose is not a qualifying employer. A borrower who is employed by such an entity at the time they apply for PSLF relief would thus not be eligible for PSLF benefits, even if the borrower had made 120 qualifying monthly payments while employed by another entity that was a qualifying employer. Second, a substantial illegal purpose finding would affect whether a borrower's monthly loan payments are credited toward PSLF relief. After July 1, 2026, the Secretary would not count as a qualifying payment any subsequent payment made by a borrower while employed by an entity that the Secretary finds to have a substantial illegal purpose.

As a matter of agency procedure, the Secretary would make substantial illegal purpose findings using one of two processes. The first agency process involves the content of a borrower's PSLF application, which is one avenue by which a borrower can receive PSLF benefits. (The rule specifies that the Secretary also may grant PSLF relief without the need for a borrower application if she already possesses sufficient information establishing the borrower's PSLF eligibility.) If the Secretary receives a borrower application on which an employer fails to certify that it does not engage in the rule's list of relevant illegal acts, then the Secretary would find that the employer has a substantial illegal purpose. The second agency process would involve an affirmative finding by the Secretary that an employer has such a purpose. The Secretary must decide, based on the evidence before her, that it is more likely than not that the employer engaged in relevant illegal acts on or after July 1, 2026, considering the materiality of such acts. Certain forms of evidence would give rise to a conclusive presumption that an employer engaged in relevant illegal acts, but the Secretary could not base a substantial illegal purpose finding on an employer's constitutionally protected actions, such as "exercising their First Amendment protected rights."

If the Secretary determines that an employer has a substantial illegal purpose, the finding would remain in effect for 10 years, at which time the employer would need to certify that it no longer engages in relevant illegal acts to regain qualifying employer status. However, the final rule allows the Secretary to restore this status at any time, so long as the employer submits a satisfactory corrective action plan that includes its certification that it no longer engages in relevant illegal acts.

Competing Views on the Final Rule's Validity

Within days of the 2025 final rule's publication, Plaintiffs filed two lawsuits challenging the Secretary's authority to apply her substantial illegal purpose eligibility rule. Among other claims, both lawsuits argue that the 2025 final rule conflicts with HEA Section 455(m)'s requirement for the Secretary to provide PSLF benefits to borrowers of Direct Loan program student loans who seek PSLF after having made 120 qualifying monthly payments while employed in a "public service job." The Plaintiffs maintain that ED's rule is thus contrary to law and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" within the meaning of the Administrative Procedure Act (APA) and should be vacated.

ED has disputed these claims. Part of ED's argument relies on the fact that various federal statutes vest the Secretary with the power to promulgate rules to carry out her statutory functions. For example, the Department of Education Organization Act empowers the Secretary to prescribe rules she deems necessary or appropriate to carry out her statutory functions.

ED's argument also rests on its view of the text and purpose of HEA Section 455(m) and, in particular, its definition of "public service job." The statutory definition lists 18 categories of full-time employment that count as a "public service job." According to ED, certain of these categories overlap. For example, a borrower who represents indigent criminal defendants would hold a "public service job" under the statute either because they provide "public interest law services" (one of the statute's 18 categories) or because they are employed by a Section 501(c)(3) organization (another of the statute's 18 categories). ED argues that its reading of Section 455(m) is permissible because it "makes sense of these overlapping categories." In ED's view, Congress's purpose in defining "public service job" using a lengthy list of partially overlapping job categories was to ensure that "only those professions that advance the public interest constitute eligible public service jobs." Providing PSLF relief to a borrower employed by an entity with a substantial illegal purpose would, ED argues, conflict with Congress's goal for the program. According to ED, granting relief to employees of organizations with a substantial illegal purpose would render the statute's "public service job" partially redundant, a result that ED says would disregard the canon against construing statutes to contain surplusage.

Plaintiffs interpret the statutory framework differently than ED. Plaintiffs observe that the HEA Section 455(m) imposes a mandatory duty on the Secretary—she "shall cancel the obligation to repay the balance of principal and interest due" on Direct Loan program student loans that are eligible for PSLF relief. Plaintiffs argue that in carrying out this mandatory duty, the Secretary lacks authority to determine that employment that otherwise fits one of the 18 "public service job" categories (e.g., a full-time job in "public education") is nonetheless not qualifying PSLF employment due to the specific acts of the employer.

The Plaintiffs in the Massachusetts federal court (Massachusetts Plaintiffs) say this result flows from the fact that Congress included only one express exception within the "public service job" definition—full-time employment in "government" counts as a "public service job," but since a 2008 amendment to the definition "time served as a member of Congress" does not. The Massachusetts Plaintiffs similarly argue that HEA Section 455(m)'s broader statutory context reinforces the Secretary's lack of discretion to make ineligible employment that otherwise fits the "public service job" definition. Section 455 extensively describes the terms and conditions of Direct Loans from interest rates and repayment plans to loan forbearance. In Plaintiffs' view, this level of statutory detail demonstrates that "Congress knows how to direct the Secretary to create specific programs and procedures to administer the Department's vast student-loan portfolio."

In their lawsuit, the Plaintiffs in the D.C. federal court (D.C. Plaintiffs) contend that any overlap in the employment categories that make up the statute's "public service job" definition, "reflects Congress's decision to broadly include within PSLF professions that advance the public interest." Such category overlap does not, in these Plaintiffs' view, delegate ED any authority to determine whether the work of a given employer advances the public interest.

ED also argues that its interpretation of the HEA parallels the Internal Revenue Service's (IRS's) administration of Section 501(c)(3) of the Internal Revenue Code (IRC). Section 501 provides an exemption from federal income taxes for entities organized and operated exclusively for listed purposes (e.g., for "educational purposes"). In 1982, the Supreme Court held in *Bob Jones University v. United States* that relevant IRC provisions contained "unmistakable evidence" that "entitlement to tax exemption depends on meeting certain common law standards of charity—namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy." The Court held the IRS had properly denied Section 501 tax exemptions to private schools that enforced racially discriminatory admissions policies because "racial discrimination in education violates deeply and widely accepted views of elementary justice." According to the Court, Congress was "acutely aware" of the IRS's Section 501 interpretation but did not amend the statute to overrule that reading. On the contrary, sources of legislative history indicated congressional approval of the IRS's view.

ED contends that the IRS's *illegality doctrine* "demonstrates that [ED's] public policy considerations are rooted in the long-standing government practice to address and deter illegal activity as a matter of policy." Plaintiffs counter that the Supreme Court has embraced the illegality doctrine because of federal tax exemptions' origins in the English law of charitable trusts. Plaintiffs contend that ED's reliance on the illegality doctrine is misplaced because the PSLF program lacks comparable common law antecedents.

On June 30, 2026, one day before the 2025 final rule was to take effect, both district courts entered judgments vacating the rule. Both courts construed HEA Section 455(m)'s plain text to bar use of the substantial illegal purpose criterion. The D.C. district court presided over litigation brought by Section 501(c)(3) organizations. The court construed Section 455(m)'s "public service job" definition as requiring "the Secretary to give borrowers credit for payments made while working full-time at any section 501(c)(3) organization." The statute, according to the district court, conferred no authority on the

Secretary to "pick and choose" among Section 501(c)(3) organizations when administering the PSLF program. Similarly, the Massachusetts district court found a clear conflict between HEA Section 455(m) and ED's rule given Congress's decision to "define qualifying public service jobs by broad categories of employment" and to make only one exception to those categories. The court explained that Congress's approach to drafting the "public service job" definition showed "a conscious choice to include all roles within a given category" of "public service job" "unless expressly excluded." Neither court accepted ED's reliance on the illegality doctrine. The D.C. district court reasoned that ED had cited no history in the loan forgiveness context of borrower eligibility turning on employer conduct comparable to the "deeply rooted" history of statutory tax exemptions depending on charitable trust principles. The Massachusetts district court found no congressional acquiescence in ED's construction of the statute comparable to Congress's inaction in the face of the IRS's application of the illegality doctrine.

Congress's Discretion to Shape the PSLF Program

On August 27, ED appealed both judgments, and those appeals remain pending. Prior to filing the appeals, ED amended the PSLF application form to comply with the district courts' orders, removing a June 2026 requirement that a borrower's employer attest that it does not have a substantial illegal purpose.

Congress has a broad range of options for responding to ED's rulemaking if it seeks to do so. The Property Clause of the U.S. Constitution vests Congress with the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," including federal contract rights. Congress "exercises the powers of the proprietor," or owner, of federal property. As such, Congress may either insist on its contractual rights or waive them, in whole or in part, by authorizing or requiring ED to cancel sums owed to the United States under a federal student loan. Congress could endorse ED's substantial illegal purpose criterion by adding it to the statute, either in the form drafted by ED or in a modified form that (for example) expands or restricts the activities that would cause an entity to be denied "qualifying employer" status. Congress could supplement ED's existing, relatively general rulemaking authorities with a specific delegation of discretionary authority to specify the employment that meets HEA Section 455(m)'s "public service job" definition. Alternatively, Congress could expressly bar the Secretary from withholding PSLF eligibility or credits based on her assessment of whether a borrower's employer's actions advance the public interest.

Author Information

Sean Stiff
Legislative Attorney

Disclaimer