AccessLex INSTITUTE®

April 21, 2025

Tamy Abernathy
U.S. Department of Education
Office of Postsecondary Education
400 Maryland Avenue SW, 5th Floor
Washington, DC 20202

Re: Intent To Receive Public Feedback for the Development of Proposed Regulations and Establish Negotiated Rulemaking Committee

Docket Number: ED–2025–OPE–0016

Dear Ms. Abernathy:

I am writing on behalf of AccessLex Institute in response to the April 4, 2025, Federal Register notice soliciting comments on programs authorized under Title IV of the Higher Education Act, including Public Service Loan Forgiveness (PSLF), Pay As You Earn (PAYE), and Income-Contingent Repayment (ICR). Below you will find AccessLex Institute's recommendations for revising the regulations governing the PSLF program and ICR and PAYE repayment plans.

AccessLex Institute, in partnership with its nearly 200 nonprofit and state-affiliated ABA-approved member law schools, has been committed to improving access to legal education and to maximizing the affordability and value of a law degree since 1983. We advocate for policies that make legal education work better for students and society alike; conduct research on the most critical issues facing legal education today; seek to expand access to legal education for underrepresented students through research, grantmaking, data analysis, and the dissemination of information and resources; and aim to increase first-time bar exam passage nationwide.

Public Service Loan Forgiveness

The PSLF program, created with bipartisan support in 2007 under the *College Cost Reduction and Access Act*, encourages individuals to pursue and persist in public service careers that benefit communities across this country. The program allows eligible Direct Loan borrowers employed by a government entity or qualifying nonprofit organization to have their loans forgiven after making 120 separate monthly payments.

Individuals pursuing PSLF are filling critical roles in sectors such as healthcare, public safety, legal aid and education. Without PSLF to support individuals in these often lower paying public service jobs, high-need and rural communities will have a harder time accessing vital services. And recent data from the Department of Education (ED) reveals that the most common employers are connected to military service, such as the Department of Defense, Department of Veterans Affairs, and various branches of the U.S. military, which highlights the role PSLF plays in shoring up our national security.[1]

On March 7, President Trump signed an executive order instructing the Secretary of Education to propose revisions to 34 C.F.R. 685.219 to ensure the definition of "public service" excludes organizations that "engage in activities that have a substantial illegal purpose."[2] As the Secretary undertakes this rulemaking process, we encourage her to take into account the following considerations.

Access to Services

PSLF has been a vital recruiting tool for incentivizing the best and the brightest to serve millions of Americans, especially in high-need and rural areas. Public service professionals, including those at 501(c)(3) nonprofits, are essential in every community. For example, in North Carolina and California, which were recently hit with natural disasters, nonprofit organizations have been crucial to disaster response, providing food, healthcare, and other support. Restricting PSLF eligibility would hinder the recruitment and retention of qualified professionals, undermining trust in the program and negatively impacting our nation's ability to serve communities during crises.

Statutory Definitions

The Higher Education Act defines "public service job," in part as one at: "…an organization that is described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title."[3] The statute is clear that all 501(c)(3) organizations, without limitation, are eligible employers for the purposes of PSLF. While ED has the authority to interpret the statute through its regulations, it cannot override the plain language of the statute. Restricting eligibility to only certain 501(c)(3) organizations would require Congress to amend the law governing PSLF.

Regarding the administration's concern about the federal government's "subsidization of illegal activities" by allowing certain organizations to be eligible

[1] U.S. Department of Education. Office of the Chief Economist. (2025, January). Where Do Borrowers Who Benefit from Public Service Loan Forgiveness Work? OCE Working Paper – OCE2024-008.
[2] Exec. Order No. 14,789, 3 C.F.R. 202 (2025).
[3] 20 U.S. Code § 1087e(m)(3)(b).

employers under PSLF,[4] the Internal Revenue Code (IRC) guards against this. In order to maintain tax-exempt status under IRC section 501(c)(3), organizations must not have an illegal purpose.[5] If such organizations engage in illegal activities, the Internal Revenue Service and the Tax Court have the authority to revoke its tax-exempt status.[6] This, in turn, would make the organization an ineligible employer for the purposes of PSLF.

AccessLex asks ED to carefully consider the service-related and legal impacts of regulatory actions that would restrict eligibility or undermine the PSLF program. As steward of the program, ED should ensure that the promise Congress made to public servants nearly 20 years ago with the creation of PSLF is kept.

Income-Driven Repayment

Income-driven repayment plans were created to help federal student loan borrowers better manage repayment. However, the availability of five different plans with slightly different terms can be confusing for borrowers. Also, some of the features of the existing plans can cause debt to increase over time, creating not just a financial burden but also a psychological one for the very borrowers these plans are designed to help.

Additionally, lawsuits related to the Saving on a Valuable Education (SAVE) plan have led to further confusion and turmoil for borrowers, not just in the SAVE plan, but in the ICR and PAYE plans, as well. ED now has an opportunity through its rulemaking authority to simplify the repayment landscape for borrowers.

ED should revise its regulations to improve repayment plans to better assist low-income borrowers. In addition to the specific changes suggested below, ED should (1) keep the 10-year standard, graduated and extended plans for all borrowers, (2) keep the current income-based, ICR and PAYE plans for existing eligible borrowers, and (3) make a new ICR plan available to all existing Direct Loan borrowers who wish to enroll and as the *only* income-driven option for new borrowers.

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[4] Exec. Order No. 14,789, 3 C.F.R. 202 (2025).

[5] Congressional Research Service. (2024). The Illegality Doctrine and 501(c)(3) Organizations (Report No. IF12739). **https://www.congress.gov/crs-product/IF12739**.

[6] *Id*.

The new ICR plan elements should include:

Monthly payment amounts

The percentage of **discretionary income paid (defined as income over 150% of the poverty line) should be based on level of income** as follows:

Borrowers making:	**Pay:**
Less than $100,000	10% of discretionary income
Between $100,000 - $150,000	12.5% of discretionary income
More than $150, 000	15% of discretionary income

Basing the percentage of discretionary income paid each month on a sliding scale will ensure that higher income borrowers, who may still need to be in an income-driven plan due to high levels of debt, pay more each month. These borrowers are likely in a better financial position to pay a little bit more of their discretionary income. This approach could also result in the federal government collecting more through this new plan than under existing income-driven plans.

Additionally, there should be **no partial financial hardship requirement** in this new plan. In other words, any eligible borrower with a qualifying loan can enroll, even if it means their monthly payment is higher than under the 10-year standard plan.

Forgiveness Terms

All borrowers enrolled in the new ICR plan should receive **forgiveness after 20 years in repayment**, regardless of whether they borrowed for an undergraduate or graduate degree. The disparate treatment of graduate students in the Revised Pay As You Earn (REPAYE) plan should not be repeated. Under that plan, simply by virtue of having one dollar of graduate education loans, borrowers were saddled with an additional five years of repayment in order to get forgiveness. Today's job market increasingly requires a graduate degree for jobs that previously did not, thus pushing applicants to obtain an advanced degree to fill jobs in certain fields.

ED should also support **making forgiveness tax-free**. The *American Rescue Plan Act* made federal student loan forgiveness tax-free until 2025, but it should be made permanent. Borrowers that utilize income-driven plans and do not pay off their loan balances are the least likely to be able to afford a high tax bill.

Treatment of Interest

ED should **eliminate interest capitalization**, which adds unpaid interest that has accumulated on a loan to the outstanding principal balance of a loan, increasing the amount that the borrower must pay back. This is a change that has bipartisan support in Congress, and was most recently included in the *College Cost Reduction Act*, introduced by Rep. Virginia Foxx (R-NC) in 2024.[7]

It is counterproductive to allow balances that will ultimately be forgiven to increase. According to the Congressional Budget Office, graduate and undergraduate borrowers in income-driven plans will repay 82.5 percent and 84 percent of the original loan disbursement, respectively.[8] This means that the amount that will be forgiven, in many cases, is mostly accumulated interest. Since ED will forgive this interest in 20 to 25 years, it would benefit the borrower today for that interest to not capitalize in a way that makes repayment seem futile.

Some of the changes proposed above will cost money, while others will save money. But the federal government's role in student lending is not to make money; it is to help struggling borrowers. This support is a feature, rather than a bug, of any open access program offered by the government to remedy a shortfall in the market. As such, ICR plans should be viewed as a government program that invests in human capital, rather than an endeavor seeking to make a profit. The above changes will simplify the myriad repayment plans for new borrowers and structure the plan in a way that truly makes repayment manageable.

Thank you for considering our comments to revise and improve existing federal higher education regulations related to the Public Service Loan Forgiveness program and Income Contingent Repayment plans. If you have any questions or would like additional information, you can reach me at **cchapman@accesslex.org**. You can also contact Nancy Conneely, our Managing Director of Policy, at **nconneely@accesslex.org**.

Sincerely,

Christopher P. Chapman
President and Chief Executive Officer

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[7] H.R.6951 - 118th Congress (2023-2024): College Cost Reduction Act. (2024). **https://www.congress.gov/bill/118th-congress/house-bill/6951**.

[8] Congressional Budget Office. (2020). Income-Driven Repayment Plans for Student Loans: Budgetary Costs and Policy Options. **https://www.cbo.gov/system/files/2020-02/55968-CBO-IDRP.pdf**.