

September 17, 2025

The Honorable Linda McMahon
Secretary of Education
U.S. Department of Education

Via Federal eRulemaking Portal

Re: William D. Ford Federal Direct Loan (Direct Loan) Program: Public Service Loan
Forgiveness, ED-2025-OPE-0016, RIN 1801-AA28

Dear Secretary McMahon,

The below signatories – non-profit organizations working to advance equality for the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community – submit this comment opposing the Department of Education’s proposed amendments to rules governing the Public Service Loan Forgiveness (PSLF) program, currently codified at 34 C.F.R. § 685.219.¹

We have significant concerns about the entire proposed rule, which seeks to coerce organizations to alter their speech and activities in contravention of the Constitution and the PSLF governing statute, 20 U.S.C. § 1087e(m). This comment, however, focuses exclusively on the proposed definition of “substantial illegal purpose” to include providing certain medical treatments to transgender individuals under the age of 19 – a population that includes 18-year-olds who have reached the age of majority under the laws of almost every state.

The purpose and effect of this definition is to make it more difficult for transgender individuals under the age of 19 to receive critical and lawful medical treatment. The proposed rule would accomplish this by creating an ad hoc, opaque administrative system that provides the Secretary with significant discretion to disqualify an employer from the PSLF program – making it more costly and difficult to recruit and retain employees. Sensitive medical care decisions should be made by doctors and patients based on clinical evaluation, not based on fear that the Secretary of Education, a federal official with no medical expertise, will subsequently determine that the organization engaged in illegal medical treatment.

¹ 90 Fed. Reg. 40154 (Aug. 18, 2025).

A. This provision of the proposed rule unlawfully discriminates against transgender individuals and could deprive both minors and adults of necessary medical care

1. Under the standards set forth in *US v. Skrametti*, this provision of the proposed rule discriminates on the basis of sex and transgender status

In *United States v. Skrametti*, the Supreme Court addressed an equal protection challenge to a state law governing health care to minors that, the Court held, did not discriminate on the basis of sex or gender identity.² Instead, the Court said, the state law classified based on “certain medical uses” of certain medications and based on age, *i.e.*, it prohibited the use of certain medications (puberty blockers or hormones) to treat adolescents for gender dysphoria but permitted the use of the same medications to treat adolescents for other medical conditions.³

By contrast, the plain language of the proposed rule discriminates on its face on the basis of sex and transgender status. The proposed definition of “substantial illegal purpose” includes “engaging in the chemical and surgical castration or mutilation of children in violation of Federal or State law.” The definition of “chemical castration or mutilation,” in turn, is drawn verbatim from Section 2 of Executive Order 14187,⁴ which defines the prohibited activity to include the use of puberty blockers “to delay the onset or progression of normally timed puberty in an individual who does not identify as his or her sex.”

As two federal courts have held in adjudicating the constitutionality of Executive Order 14187, that definition is facially discriminatory because it would bar a transgender individual from using puberty blockers even for the same medical purpose as a cisgender individual.⁵ As one Court explained: “[A] cisgender teen who needs puberty blockers in the course of treatment for cancer or endometriosis, or as a result of disabilities rendering puberty intolerable, could receive them . . . , but a transgender teen who needs puberty blockers *for the same diagnosis* – and not to align with the teen's gender identity – could not.”⁶ Unlike in *Skrametti*, where the Court said that the law “did not exclude any individual from medical treatments on the basis of transgender status,”⁷ this proposed definition addresses “a class of *persons* identified on the basis of a specified characteristic,” and targets their use of puberty blockers.⁸

² 145 S. Ct. 1816 (June 18, 2025).

³ *Id.* at 1829.

⁴ 90 Fed. Reg. at 40158/3.

⁵ See *Washington v. Trump*, 768 F. Supp. 3d 1239, 1266-67 (W.D. Wash. 2025), appeal pending, No. 25-1922 (9th Cir.); *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405, 446 n.38 (D. Md. 2025), appeal pending, No. 25-1279 (4th Cir.).

⁶ *Washington*, 768 F. Supp. 3d at 1266-67 (footnotes omitted).

⁷ 145 S Ct. at 1833.

⁸ *Id.* at 1833 n.3. Notably, the facially discriminatory character of this definition also demonstrates that the proposed rule’s inclusion of so-called “chemical and surgical castration or mutilation” is designed to effect

2. *This provision of the proposed rule is the product of irrational animus against transgender people and is therefore unconstitutional*

In addition, the proposed rule’s inclusion of so-called “chemical and surgical castration or mutilation” is unconstitutional because it is the product of irrational animus against transgender people. The Supreme Court has long held that the government violates the requirement of equal protection under any standard of review when it acts on “mere negative attitudes,” “fear,” or “irrational prejudice,” or on “a bare desire to harm a politically unpopular group.”⁹ Likewise, if a policy’s “avowed purpose and practical effect” is “to impose a disadvantage, a separate status, and so a stigma” on a particular group, the policy cannot survive even rational basis review.¹⁰ “[N]o legitimate purpose overcomes the purpose and effect to disparage and to injure.”¹¹

Here, in addition to adopting facially discriminatory language from Executive Order 14187, discussed above, the proposed rule implements Executive Order 14235, which uses inflammatory and disparaging language by describing medical treatments of transgender individuals as “child abuse.” Other “close-in-time-executive actions directed at transgender Americans” similarly “contained powerfully demeaning language.”¹²

For example, Executive Order 14183, which prohibited transgender people from serving in the armed forces without exemption, declared that: “expressing a false ‘gender identity’ divergent from an individual’s sex cannot satisfy the rigorous standards necessary for military service”; “adoption of a gender identity inconsistent with an individual’s sex conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle, even in one’s personal life”; and “[a] man’s assertion that he is a woman, and his requirement that others honor this falsehood, is not consistent with” the qualities of “humility” and “selflessness.” Analyzing this language, a federal court found that Executive Order 14183 is “soaked in animus,” “dripping with pretext,” “unabashedly demeaning,” and “stigmatiz[ing].”¹³

In addition, Executive Order 14168 made it the official “policy of the United States” to recognize only “two sexes” based on “immutable biological classification as either male or female.” It defined “gender ideology” as “permitting the false claim that males can identify as and thus

invidious discrimination against transgender individuals. The Supreme Court in *Skrimetti* acknowledged that government action is presumptively unconstitutional and subject to heightened constitutional scrutiny if “it was motivated by an invidious discriminatory purpose.” *Id.* at 1832; *see also id.* at 1858 n.2 (Alito, J., concurring in part) (“When a law employs any classification for the purpose of invidious sex discrimination, that classification is rightly treated as a sex classification.”).

⁹ *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 448, 450 (1985); *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

¹⁰ *United States v. Windsor*, 570 U.S. 744, 770 (2013).

¹¹ *Id.* at 775.

¹² *Orr v. Trump*, 778 F. Supp. 3d 394, 417 (D. Mass. 2025), appeal filed, No. 25-1579 (1st Cir.).

¹³ *Talbott v. United States*, 775 F. Supp. 3d 283, 326 (D.D.C. 2025), appeal filed, No. 25-5087 (D.C. Cir.).

become women and vice versa”; ordered all agencies to “remove all statements, policies, regulations, forms, communications, or other internal and external messages that promote or otherwise inculcate gender ideology”; and ordered agencies to “end the Federal funding of gender ideology.” Multiple federal courts have held that Executive Order 14168 was motivated by naked animus against transgender individuals,¹⁴ as it “reflects a ‘bare desire to harm a politically unpopular group’ as its underlying ‘actual purpose.’”¹⁵ And looking at Executive Order 14168 in conjunction with other contemporaneous Executive Orders designed to strip legal protections from transgender people,¹⁶ another federal court found that the administration had repeatedly adopted policies that, “in tone and language, convey[] a fundamental moral disapproval of transgender Americans.”¹⁷

Taken together, the breadth of these Executive Orders targeting transgender people are “so far removed” from any possible justification that they “raise the inevitable inference” of “animosity toward the class of persons affected.”¹⁸ This same animus underlies Executive Order 14235 and this provision of the Department’s proposed rule. The Department offers no reason why it included medical treatment for transgender individuals as a disqualifying activity while excluding countless illegal activities. The proposed rule treats medical care for transgender individuals (including legal adults) as comparable to terrorism, plainly demonstrating a hostility unexplainable except by invidious discrimination against transgender individuals.

The predictable and intended result of this discrimination and weaponization of PSLF is to scare employers (and their borrower employees) from providing lawful healthcare to transgender individuals for fear of losing their PSLF eligibility. Nearly 60% of medical school graduates with student debt plan to participate in PSLF, and they hold an average debt of \$220,000 each. In addition, nearly one in six borrowers receiving forgiveness under PSLF work for healthcare organizations.¹⁹ The proposed rule is designed to put healthcare employers in the untenable

¹⁴ See *Washington*, 768 F. Supp. 3d at 1277; *San Francisco AIDS Foundation v. Trump*, No. 25-cv-01824-JST, 2025 WL 1621636, at *15 (N.D. Cal. June 9, 2025) (the “facially discriminatory objective” to “disapprove of transgender people” in EO 14168 is “not a legitimate government interest”), appeal filed, No. 25-4988 (9th Cir.); *Orr*, 778 F. Supp. 3d at 418 (“these challenged actions are built on a foundation of irrational prejudice toward fellow citizens whose gender identity does not match their sex assigned at birth”); cf. *Schlacter v. U.S. Dep’t of State*, No. 1:25-cv-01344, ECF No. 65 at 28–29 (declining to independently decide whether the government’s passport policy implementing EO 14168 was motivated by animus, but finding that the government’s proffered justifications for the policy “fail to pass the most deferential standard of rational basis review”).

¹⁵ *Washington*, 768 F. Supp. 3d at 1277.

¹⁶ See Executive Orders 14183 (military), 14187 (healthcare), 14190 (schools), 14201 (sports).

¹⁷ *Orr*, 778 F. Supp. 3d at 418.

¹⁸ *Romer v. Evans*, 517 U.S. 620, 634–35 (1996).

¹⁹ See, e.g., Association of American Medical Colleges, *Medical School Graduation Questionnaire: 2025 All Schools Summary Report* tbls. 22 & 23 (July 2025) (median loan debt for the 70% of medical school graduates reporting educational debt was \$220,000; 57% of medical school graduates with student debt

position of having to choose between supporting their employees' need for, and reliance on, the PSLF program and supporting the health and wellbeing of transgender adolescents who need medical treatment for gender dysphoria.²⁰

B. Congress did not authorize the Secretary of Education to determine whether an employer engaged in illegal conduct or to make medical judgments

Congress provided that the Secretary “shall cancel” the balance for student loan borrowers who have “been employed in a public service job during the period in which the borrower makes each of [their] 120 payments.”²¹ Congress defined the term “public service job” to mean a “full-time job” either (1) in various occupations – including “government” or “health;” (2) in public service “for individuals with disabilities” or “the elderly”; or (3) “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.”²²

Given Congress' categorical approach, there is no statutory basis for this proposed rule, nor discretion afforded to the Secretary to cabin what constitutes a “public service job.” Congress made clear, for example, that if a borrower's full-time job is “in” health, it falls within the scope of a public service job. Likewise, if a borrower's full-time job is “at” a tax-exempt 501(c)(3), it *always* falls within the scope of a public service job. The statutory text leaves no room for the Department to add further requirements.

Additionally, the proposed requirements are well outside the bounds of the Department's authority for the reasons the Supreme Court explained in *Gonzales v. Oregon*.²³ In *Gonzales*, the Attorney General claimed authority to determine that a certain practice – using controlled substances to assist suicide – violated federal law. The Court identified two significant structural problems with that interpretation. First, it would have involved an “obscure grant of authority to regulate areas traditionally supervised by the States' police power” – the regulation of medical treatment.²⁴ Second, it would have permitted the Attorney General, rather than the Secretary of Health and

planning to participate in PSLF), <https://www.aamc.org/media/85416/download>; Fed. Reg. 40171 tbl. 4.4 (158,600 out of 974,100 borrowers, or 16.3%, who received PSLF were employed by healthcare organizations).

²⁰ See, e.g., Joanne LaFleur, et al., *Gender-Affirming Medical Treatment for Pediatric Patients with Gender Dysphoria*, UNIVERSITY OF UTAH COLLEGE OF PHARMACY 90–91 (Aug. 6, 2024) (finding that medical treatments for gender dysphoria in adolescents are both safe and effective with virtually no regret).

²¹ 20 U.S.C. § 1087e(m)(1)(A) & (B).

²² *Id.* § 1087e(m)(1)(3)(B)(i).

²³ 546 U.S. 243 (2006).

²⁴ *Id.* at 274.

Human Services, to make medical decisions, even though “the Attorney General is an unlikely recipient of such broad authority, given the Secretary’s primacy in shaping medical policy.”²⁵

The same flaws are fatal here. First, the proposed rule empowers the Secretary to independently determine, apparently *de novo*, whether an employer engaged in purported substantial illegal activity.²⁶ She is thus claiming for herself the power to “authoritatively interpret ‘State’ and ‘local laws,’” despite what the Supreme Court described in *Gonzales* as the “the obvious constitutional problems” with such an approach.²⁷

The Department does not explain why it is appropriate for it to enforce state law, particularly when that approach is inconsistent with other portions of the same proposed rule. Indeed, elsewhere in the proposed rule, the Department declines to include state antidiscrimination laws in its definition of “illegal discrimination” because “[l]imiting the scope to only Federal laws will help reduce the burden on the Department” in light of the “many State laws addressing discrimination” and will ensure “consistent and uniform” enforcement of a “narrow set of Federal laws.”²⁸ But the same burdens of enforcing varied state laws apply to this provision of the rule. And, critically, the risk of reaching an inconsistent conclusion about the meaning of state law is higher when analyzing laws addressing medical treatments, particularly since most of the laws are relatively new and lack any state judicial interpretation.²⁹

Second, the Department lacks any expertise on medical issues and Congress has not called on the Department to weigh in on such questions. Contrary to the Department’s claims, the Department will still be called on to resolve medical questions because many of the relevant laws hinge on medical judgments and expertise.³⁰ Indeed, at the state level, many such laws are enforced in the

²⁵ *Id.* at 266; *see id.* at 267; *see also King v. Burwell*, 576 U.S. 473, 486 (2015) (“It is especially unlikely that Congress would have delegated this decision to the *IRS*, which has no expertise in crafting health insurance policy of this sort.”).

²⁶ 90 Fed. Reg. at 40155/2 (stating that that relying on court judgments or plea agreements will “limit[] the need for new investigative processes,” thus recognizing there will be some need for new investigative processes). Compare *id.* at 40162/1 (for another provision, defining “violating State law” to mean only a “final, non-default judgment by a State court”).

²⁷ 546 U.S. at 264.

²⁸ 90 Fed. Reg. at 40159/3; *see also* 90 Fed. Reg. at 40162/1 (explaining that the Department limited “violating State law” for another provision to mean “relying upon a court decision made after a full trial or hearing” to “ensure[] an employer, suspected of having violated State law under this proposed rule, was provided consistency and fairness”).

²⁹ Notably, all the state laws referenced by the Department were enacted in the last four years, 90 Fed. Reg. at 40159 n.18. The proposed rule offers no insight into how the Secretary will determine the meaning of state laws, a task made even more difficult by the draconian layoffs in the Department’s Office of General Counsel.

³⁰ 90 Fed. Reg. at 40159/1 (incorporating substantive standards of federal and state laws regulating medical treatment); *see, e.g.*, N.C. Gen. Stat. 90-21.152(b) (permitting continuation of puberty-blocking drugs if,

first instance by medical board, not courts and certainly not education agencies. Congress has not “cede[d]” such “medical judgments to an executive official who lacks medical expertise.”³¹

In sum, this proposed rule would give the Secretary of Education enormous and unprecedented authority to make medical judgments outside of the Secretary’s purview and legal assessments outside of her expertise and authority.

* * *

The Department’s proposed rule represents a broad attack on civil society and its disfavored groups. The entire rule, as other comments explain, has constitutional and statutory flaws. And, as detailed in this comment, the specific provisions related to transgender healthcare are specifically unlawful. The Department should not move forward with this proposed rule.

Sincerely,

GLBTQ Legal Advocates & Defenders (GLAD Law)

Advocates for Trans Equality (A4TE)

Equality California

Family Equality

GLSEN

Greater Boston PFLAG

Lambda Legal

LGBT Life Center

National Women’s Law Center

National Black Justice Collective (NBJC)

One Colorado

Our Family Coalition

OutFront Minnesota

Resource Center

among other things, “[i]n the reasonable medical judgment of the medical professional, it is in the best interest of the minor for the course of treatment to be continued or completed”).

³¹ 546 U.S. at 266.

SAGE

SpeakOUT Boston

The Center for HIV Law and Policy (CHLP)

The Trevor Project

Transhealth