

August 12, 2022

Office of Postsecondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202  
*via [www.regulations.gov](http://www.regulations.gov)*

Re: Docket ID ED-2021-OPE-0077

To whom it may concern:

We write to provide comment on the proposed rule, “Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program” published on July 13, 2022.<sup>1</sup>

Specifically, we provide comments on the Public Service Loan Forgiveness regulations, which focus on the constitutional parameters that bar the use of government funds for religious activities.

The Public Service Loan Forgiveness (PSLF) program forgives Direct student loans of individuals who work in a “public service job” while making the equivalent of ten years of qualifying payments on their loan.<sup>2</sup> The program was designed to encourage and reward public service<sup>3</sup> and the forgiveness becomes available “after [the individuals] satisfy the public service” requirement.<sup>4</sup> Functionally, it is a payment to the individual for working in public service—performing certain jobs that provide service to our country and our communities for the public good.

From the program’s inception until 2020, PSLF regulations included a religious freedom protection that ensured that taxpayers do not fund religious activities such as religious worship.<sup>5</sup> Despite agreement from negotiators to retain it, the Trump administration stripped this safeguard from the regulations in 2020.<sup>6</sup> We urge the administration to restore religious freedom protections in the regulations.

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<sup>1</sup> 87 Fed. Reg. 41,878 (July 13, 2022).

<sup>2</sup> 20 U.S.C. § 1087e(m)(1).

<sup>3</sup> H. Rep. No. 110-210 at 48 (2007).

<sup>4</sup> 87 Fed. Reg. at 42,000.

<sup>5</sup> See 73 Fed. Reg. 63,231, 63,257 (Oct. 23, 2008).

<sup>6</sup> 85 Fed. Reg. 49,798, 49,798 (Aug. 14, 2020).

## The First Amendment Bars Government Funding of Religious Activities

One of the most fundamental and historic principles of religious freedom in our country is that each of us gets to decide for ourselves when, how, and even whether we support religion. That is why the Constitution bars the government from using taxpayer funds to support religious activities.<sup>7</sup>

This prohibition is most clear when the money would aid clergy and others who lead worship and engage in other explicitly religious activities. The Supreme Court has explained that the public’s “indignation” toward using government funds to pay ministers was what led to the adoption of the Establishment Clause.<sup>8</sup> In fact, Thomas Jefferson’s Virginia Bill for Establishing Religious Freedom (on which the Establishment Clause is based) was a direct response to efforts to enact a tax to pay ministers and religious teachers.<sup>9</sup>

The Supreme Court recently emphasized that the Establishment Clause’s protections “must be interpreted ‘by reference to historical practices and understandings,’” and must ‘accor[d] with history and faithfully reflec[t] the understanding” of our nation’s founders.<sup>10</sup> There may be no clearer historical example than the prohibition on the use of funds to support religious leaders engaged in religious activity.<sup>11</sup>

Although leading worship is important work for a church and its members, it is not a service to the general public and not what Congress intended to encourage and reward in PSLF. It is categorically different from the “public service jobs” under PSLF like serving in the Peace Corps or military, teaching Head Start, working with veterans, people with disabilities, or the elderly, or working at a public library. Treating it as the same would not just be counter to the program’s purpose, it would also impermissibly favor religion. It’s not the government’s role to “entice” people to serve as clergy in houses of worship, lead worship, or engage in explicitly religious activities.<sup>12</sup>

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<sup>7</sup> See, e.g., *Mitchell v. Helms*, 530 U.S. 793, 840, 857 (2000) (controlling concurring opinion of O’Connor, J.).

<sup>8</sup> See *Everson v. Board of Educ.*, 330 U.S. 1, 11 (1947).

<sup>9</sup> See *Locke v. Davey*, 540 U.S. 712, 722 n.6 (2004).

<sup>10</sup> *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2428 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014) (alterations in original)).

<sup>11</sup> Just this term, the Supreme Court noted the “historic and substantial . . . interest” against using “taxpayer funds to support church leaders.” *Carson v. Makin*, 142 S. Ct. 1987, 2002 (2022) (quoting *Locke*, 540 U.S. at 722).

<sup>12</sup> See [Fact Sheet: Public Service Loan Forgiveness \(PSLF\) Program Overhaul](#), U.S. Dep’t of Educ., Oct. 6, 2021.

## The Regulations Should Uphold Religious Freedom

The Department should ensure its regulations align with the core religious freedom principle that taxpayer funds should not support religious activities.<sup>13</sup> Until 2020, time spent engaged in explicitly religious activities (religious instruction, religious worship, and proselytization) did not count toward the 30 hours required for full-time employment under the program. The employer certification form simply asked the employer to fill in how many hours an employee worked, aside from time spent on explicitly religious activities.<sup>14</sup>

It's important to note that this safeguard did not stand in the way of anyone working at faith-based organizations or even houses of worship.<sup>15</sup> It just meant that their job had to be about providing key public services, such as helping refugees or providing services to the elderly, and not leading worship. If there was a weekly staff worship service, for example, that time simply wouldn't have counted towards the 30 hours required, but all the work done to provide public service would have.

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PSLF is an important program that encourages and rewards public service and we appreciate the Department's proposals to clarify and improve how the program is administered. We believe the Department should honor religious freedom and restore safeguards that align with the fundamental principle that taxpayer funds should not support religious activities.

Sincerely,

Americans United for Separation of Church and State  
Interfaith Alliance  
National Council of Jewish Women  
People For the American Way

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<sup>13</sup> This issue was raised briefly during negotiations on the proposed rule.

<sup>14</sup> In the preamble to the proposed rule, the Department several times asks about the operational viability of different proposals. *E.g.*, 87 Fed. Reg. at 41,933. With regard to the time-spent question, it was in place for years without the Department raising concerns about how it works; thus, it was operationally viable. In addition, the Department also raises concerns about including for-profits as qualified employers because they have "less required transparency than nonprofit organizations." *Id.* It's important to remember that houses of worship have special legal protections and exemptions that make them less transparent than other nonprofits. For example they do not have to file 990s with the IRS. Nor do they have to abide by civil rights laws: they can hire and fire their clergy as they choose.

<sup>15</sup> To the extent there are individuals who have made qualifying payments and whose full-time public service employment includes explicitly religious activities since the rule change in 2020, we believe they should be allowed to rely on the 2020 rules.