January 10, 2020

Office of Postsecondary Education
Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202


To Whom It May Concern,

BJC (Baptist Joint Committee for Religious Liberty) and the National Council of Nonprofits (Council of Nonprofits) submit the following comments to the proposed rule “Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, Teacher Education Assistance for College and Higher Education Grant Program, Federal Pell Grant Program, Leveraging Educational Assistance Partnership Program, and Gaining Early Awareness and Readiness for Undergraduate Programs,” which was published in the Federal Register on December 11, 2019.

BJC and Council of Nonprofits commend the Department for including a variety of interests and perspectives in its negotiated rulemaking in 2019 concerning regulatory issues in higher education. While the committee ultimately addressed many topics, these comments will focus on provisions relating to Public Service Loan Forgiveness (PSLF) Program and Gaining Early Awareness and Readiness for Undergraduate
Interest of BJC and Council of Nonprofits
BJC has vigorously supported religious liberty in the historic Baptist tradition for more than 80 years. BJC serves 16 supporting organizations, including state and national Baptist conventions and conferences, and churches throughout the country. BJC advocates on legal and policy matters relating to religious liberty and the separation of church and state that arise in Congress, the courts, and administrative agencies. Our mission is to defend and extend God-given religious liberty for all, bringing a uniquely Baptist witness to the principle that religion must be freely exercised, and it must not be advanced or inhibited by the government. BJC has a consistent record of supporting strong enforcement standards for both of the First Amendment’s religion clauses—No Establishment and Free Exercise.

The Council of Nonprofits is a trusted resource and proven advocate for America’s charitable nonprofits. With reach and expertise across the executive, judicial, and legislative branches at the federal, state, and local levels, the Council of Nonprofits is uniquely qualified and positioned to connect the policy dots and keep nonprofits informed and empowered to create a positive public policy environment that best supports nonprofits in advancing their missions. Working with and through the nation’s largest network of nonprofits – with 25,000-plus organizational members - we identify emerging trends, share proven practices, and promote solutions that benefit charitable nonprofits and the communities they serve. Nonprofits employ more than ten percent of American’s private workforce,¹ and of the borrowers who have submitted and had employment certification forms approved for PSLF so far, nearly two out of five (38 percent) borrowers work at 501(c)(3) nonprofit organizations.²

Revisions to Public Service Loan Forgiveness Program
The Public Service Loan Forgiveness Program (PSLF) is a federal program aimed at relieving educational debt for those who are working in the public interest while employed by the nonprofit sector, specifically 501(c)(3) charitable nonprofits and other tax exempt organizations working in public service, or a government entity. In 2019, more than 43 million former students collectively carried an education debt load of more than $1.6 trillion.³ Because public service professionals are often paid less than

¹ https://www.nonprofitimpactmatters.org
² https://www.councilofnonprofits.org/tools-resources/public-service-loan-forgiveness
³ ld.
their counterparts in for-profit business and industry, PSLF provides an avenue for the nonprofit sector and government to attract and retain employees to work in public service within their communities.

The current regulations define public service organizations as nonprofit organizations “not engaged in religious activities, unless the qualifying activities are unrelated to religious instruction, worship services, or any form of proselytizing.” The Department included this in the work of the committee suggesting that excluding these employees might violate the Free Exercise Clause and might be confusing to borrowers who work at such organizations but perform the duties that would qualify them for relief through PSLF.

In *Locke v. Davey*, 540 U.S. 712 (2004), the U.S. Supreme Court held that the government may choose to not fund higher educational pursuits for theological training. *Locke* justifies this current definition of public service organizations, and nothing in *Trinity Lutheran v. Comer*, 137 S. Ct. 2012 (2017), requires any change to the rule. However, in the spirit of bringing clarity to borrowers while complying with the constitutional jurisprudence, the committee and Department reached a commendable compromise to move the qualification on job function from the type of qualified employer to the description of qualified employee. The proposed change would permit employees of religious organizations to qualify for relief under PSLF if they can meet the full-time requirement after excluding the “[t]ime spent participating in religious instruction, worship services, or any form of proselytizing.” This reasonable compromise clarifies that employees of religious organizations may qualify for PSLF relief while maintaining the constitutional boundary set in *Locke*.

The Department also seeks comment on whether this revision may substantially burden a person’s exercise of religion under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, et seq. It does not. RFRA does not alter the Establishment Clause boundaries that must be considered when analyzing a situation where tax dollars could be funding religious exercise nor should it be interpreted as creating a presumptive entitlement for government funding. If the Department insists on viewing the scope of the program as creating a burden on religious exercise, *Locke* could also be illustrative. In ruling that the state may exclude devotional theology from the list of approved majors eligible for a scholarship, Chief Justice Rehnquist wrote that “the exclusion of such funding places a relatively minor burden” on the students. Any burden on those whose employment duties include religious instruction, worship services, or any form of proselytizing to exclude those hours from a time calculation for qualification in PSLF is similarly minor.

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4 *Locke*, 540 U.S. at 725.
Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

GEAR UP seeks to increase the number of low-income students who graduate from high school and are prepared for and can succeed in postsecondary education.” Several religious colleges and universities participate in the program as qualified institutions of higher education. The committee reviewed various aspects of the program and recommended a few changes which BJC supports.

The proposed rule retains important language related to the Establishment Clause in Section 694.5(a) requiring that these government-funded services be “secular, neutral, and nonideological.” Religious institutions have a long history of partnering with the government to provide government services within proper constitutional boundaries. Ensuring that taxpayers are funding “secular, neutral, and nonideological” services is one of these important boundaries. Similarly, Secretary DeVos has affirmed this language in her March 11, 2019 update to Congress on the Elementary and Secondary Education Act of 1965.6

The current rules prohibit an institution of higher education that is pervasively sectarian from serving as a fiscal agent for the program. The proposed rule seeks to remove this limitation to permit any institution of higher education to serve as a fiscal agent. As mentioned supra, religious institutions may partner with the government within appropriate constitutional boundaries. Because the language ensuring that the programs offered would be “secular, neutral, and nonideological” is retained, deleting “pervasively sectarian” should not alter the constitutional framework in which GEAR UP is operating.

The final change that these comments will address is the strengthening of Section 694.6(b). The current rule requires, among other qualifications, that the providers of services to students attending private schools be “independent of ... any religious organization affiliated with the school.” The proposed change would require those providers to be “independent of ... any other organization affiliated with the school.” We agree with the Department that deleting the word “religious” in this context clarifies that employment as a GEAR UP provider “must be independent of organizations affiliated with the school, regardless of whether those organizations are religious in nature.” While only 0.1 percent of schools currently served by GEAR UP programs are private, this change is still worthwhile as it keeps important safeguards without singling out religious organizations.

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5 [https://www2.ed.gov/programs/gearup/faq.html#question6](https://www2.ed.gov/programs/gearup/faq.html#question6)
6 [https://www2.ed.gov/policy/elsec/guid/secletter/190311.html](https://www2.ed.gov/policy/elsec/guid/secletter/190311.html)
Conclusion
BJC commends the Department for keeping these important constitutional boundaries in place while clarifying areas of confusion in PSLF and GEAR UP. As detailed herein, BJC supports these proposed rules as recommended by the committee. The Council of Nonprofits support the proposed regulations affecting PSLF as described herein.

Respectfully,

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