UNITED STATES DISTRICT COURT
THE DISTRICT OF COLUMBIA

AMERICAN ASSOCIATION OF NURSE PRACTITIONERS, *et al.*,

Plaintiffs,

v.

LINDA MCMAHON, *et al.*,

Defendants.

Case No. 1:26-cv-01780

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR STAY UNDER 5 U.S.C. § 705 AND FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Our nation depends on a steady pipeline of highly trained professionals—nurses, educators, public health experts, therapists, and countless others whose work sustains the health, safety, and economic well-being of society. Many people who would like to pursue a professional career in these critical fields require financial assistance to pay for the education needed to obtain that goal. For decades, the federal student loan program has helped to bridge that gap by making it financially possible for students to continue their education in graduate and professional programs. This program has developed a skilled workforce with enormous benefits for our nation's economy and health.

In July 2025, Congress enacted a reconciliation act that imposed different levels of loan limits for students pursuing "graduate degrees" or "professional degrees." Graduate students will be permitted to borrow up to $100,000 in federal loans, with a $20,500 annual maximum. Professional students will be able to access a total of $200,000 in these loans, with a $50,000 annual cap. The distinction between a "graduate degree" and a "professional degree" is thus of critical importance to students planning their careers, as many will face substantial barriers in financing their education and will be unable to get the training they need to become advanced practice nurses, educators, or other professionals if they were subject to the lower cap.

Congress incorporated a static, pre-existing regulatory definition of a "professional degree" into the reconciliation act. Despite this, the Department adopted a new definition of "professional degree" that departs in significant ways from the definition Congress codified. The Department did so in a Final Rule published on May 1, 2026, which purports to become effective on July 1, 2026, in violation of statutory timing requirements. The Rule invents new criteria for a "professional degree" that are not present in the statutory text, thereby making the statute's illustrative list of degrees an exclusive one. Relying on its own rewrite of the statute, the

Department excluded students pursuing degrees in professions such as nursing, education, public health, and marriage and family therapy from the benefits of the higher loan caps that Congress had intended to provide to them.

The Rule is contrary to law twice over. As an initial matter, the Rule cannot take effect for the coming school year given the Department's acknowledged violation of the master calendar provision, which requires that regulatory changes affecting student financial assistance be finalized by November 1 to go into effect by July 1 of the following year. Moreover, the Rule's definition of a "professional degree" directly contravenes the statute. Congress adopted three, and only three, criteria for a program to meet to qualify as a professional degree: the degree signifies "completion of the academic requirements for beginning practice in a given profession," the degree signifies "a level of professional skill beyond that normally required for a bachelor's degree," and licensure is "generally required." The Department was not free to add new criteria to that statutory list.

Absent relief from this Court, the Department's unlawful Rule will take effect on July 1, with devastating effects for students, schools, and professionals in the coming school year. Students who have been accepted to professional schools will drop out of their enrollment and have to step away from their chosen career paths; schools will lose the tuition payments that they rely upon to operate academic programs of the highest quality; and the nation as a whole will lose out from the loss of talented entrants into key professional fields. The Rule should be stayed, and the Department should be enjoined from implementing it.

BACKGROUND

I. Congress's Enactment of Student Loan Caps for Graduate and Professional Students

The Department of Education's Direct Loan program is the single largest source of federal financial assistance for postsecondary education. *See generally* Alexandra Hegji, Cong. Rsch. Serv., R45931, Federal Student Loans Made Through the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers (2024), https://perma.cc/6AWB-GB8Z; 20 U.S.C. Ch. 28, Subch. IV, PT. D. Federal Direct Loans have many advantages over private loans, including lower rates and more flexible repayment options. *See, e.g.*, Fed. Student Aid, Federal Versus Private Loans, https://perma.cc/7QNC-98FJ. The Department implements the Direct Loan program under authority accorded to it under the Higher Education Act. *See* 20 U.S.C. § 1087a.

When it amended the Higher Education Act in 1986, Congress adopted procedural requirements for the Department to follow before it could adopt or revise regulatory standards governing the terms of student loans. Ordinarily, the Department is required to follow a process of negotiated rulemaking, under which it first selects a committee of individuals with expertise or experience in the relevant subjects of negotiation and arrives at a tentative approach after consultations with that committee, then publishes a proposed rule reflecting those consultations, and then issues a final rule after providing notice to the public and an opportunity for comment. 20 U.S.C. § 1098a(b). Congress also enacted a "master calendar" provision that imposes strict deadlines for the Department of Education to complete its rulemakings, and that specifies the legal effect of the Department's late-issued rules. "To assure adequate notification and timely delivery of student aid funds under this subchapter," 20 U.S.C. § 1089(a), the statute imposes

mandatory deadlines for the distribution of forms, the allocation of funds, and, as relevant here, the publication of regulations:

> Except as provided in paragraph (2), any regulatory changes initiated by the Secretary affecting the programs under this subchapter that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date.

Id. § 1089(c)(1). Regulations published after this cutoff date may be applied in the next school year only with respect to those institutions that choose to adopt the rule, and only if the Department publishes a notice that the institutions have that option. *Id.* § 1089(c)(2). The Department may waive the negotiated rulemaking provisions of the Higher Education Act upon showing good cause to do so, but there is no similar provision permitting the Department to waive the master calendar provision. *Compare id.* § 1098a(b), *with id.* § 1089(c).

In July 2025, Congress enacted a reconciliation act that addressed, among many other things, the Direct Loan program. The Act is colloquially known as the "One Big Beautiful Bill Act." Pub. L. No. 119-21, 139 Stat. 72, 335 (2025) ("the Act"). Title VIII of the Act eliminated one type of Direct Loan, known as a Grad PLUS loan, and imposed new borrowing limits on other Direct Loans. *See generally* Alexandra Hegji, Cong. Rsch. Serv., IN12585, Student Loan Types and Limits in the FY2025 Budget Reconciliation Act (2025), https://perma.cc/5NSE-DFPR.

In section 81001 of the Act, titled "Establishment of Loan Limits for Graduate and Professional Students and Parent Borrowers; Termination of Graduate and Professional PLUS Loans," Congress amended the Higher Education Act by adding a new subsection (a)(4) to 20 U.S.C. § 1087e. Pub. L. No. 119-21, § 81001. The new section 1087e(a)(4) imposes separate student loan caps for "graduate" students and "professional" students. The new annual limit for Federal Direct Unsubsidized Stafford loans, which the Act contemplates would come into effect

as of July 1, 2026, is $50,000 for professional students, as compared to $20,500 for graduate students. 20 U.S.C. § 1087e(a)(4)(A). The new aggregate limit beyond the amount borrowed for undergraduate education, also starting July 1, 2026, is also higher for professional students than it is for graduate students. *Id.* § 1087e(a)(4)(B). The aggregate limit for a professional student who is not, and has not been, a graduate student is $200,000; meanwhile, the aggregate limit for a graduate student who is not, and has not been, a professional student is $100,000. *Id.* The distinction between graduate and professional students thus has a significant bearing on a student's access to federal student loans.[1]

Congress also enacted new statutory definitions for the terms "graduate student" and "professional student." The definition of a graduate student relies on the definition of a professional student: a graduate student is "a student enrolled in a program of study that awards a graduate credential (other than a professional degree) upon completion of the program." *Id.* § 1087e(a)(4)(C)(i). A professional student, in turn, is defined by reference to a preexisting regulation: a professional student is "a student enrolled in a program of study that awards a professional degree, as defined under section 668.2 of title 34, Code of Federal Regulations (as in effect on July 4, 2025), upon completion of the program." *Id.* § 1087e(a)(4)(C)(ii).

II. The Department of Education's Preexisting Regulation

The Act's definition of "professional student" thus references and incorporates the definition in 34 C.F.R. 668.2 "as in effect on July 4, 2025." As of July 2025, the regulation read as follows:

> Professional degree*:* A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor's degree. Professional licensure is also generally required. Examples of a professional degree include but are not

[1] The new limits would apply to anyone who—as of June 30, 2026—had not already received a direct federal loan for an ongoing program of study. 20 U.S.C. § 1087e(a)(8).

> limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.).

34 C.F.R. § 668.2(b) (2025). That regulatory definition is part of a set of definitions that "apply to all Title IV, [Higher Education Act] programs." *Id.* It was part of the "general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended." 34 C.F.R. § 668.1(a).

The Department promulgated that regulatory definition in 2007. 72 Fed. Reg. 62014, 62024–25 (Nov. 1, 2007). In that notice of proposed rulemaking, the Department explained that the purpose of the rulemaking was to help standardize the regulatory definitions of "graduate or professional student" and "undergraduate student" in the Department's regulations, since at the time there were "three definitions of graduate or professional student" and "four definitions of undergraduate student." 72 Fed. Reg. 44620, 44620–22 (Aug. 8, 2007). The 2007 regulatory definition of "professional degree" remained unchanged until Congress incorporated it by reference into the Act. 20 U.S.C. § 1087e(a)(4)(C)(ii); 34 C.F.R. § 668.2(b) (2025).

III. The Department of Education's New Rulemaking

A. Proposed Rule

In January 2026, the Department published a Notice of Proposed Rulemaking (NPRM) to propose a new definition of a "[p]rofessional [s]tudent" for purposes of the recently enacted student loan caps. 91 Fed. Reg. 4254, 4332 (Jan. 30, 2026). Embedded within the NPRM's proposed definition of "professional student" was a new four-prong definition of "professional degree," which reads as follows:

> (1) A professional degree is a degree that:

> (i) Signifies both completion of the academic requirements for beginning practice in a given profession, and a level of professional skill beyond that normally required for a bachelor's degree;
>
> (ii) Is generally at the doctoral level, and that requires at least six academic years of postsecondary education coursework for completion, including at least two years of post-baccalaureate level coursework;
>
> (iii) Generally requires professional licensure to begin practice; and
>
> (iv) Includes a four-digit program CIP code, as assigned by the institution or determined by the Secretary, in the same intermediate group as the fields listed in paragraph (2)(i) of this definition.

Id. (to be codified at 34 C.F.R. 685.102(b)). While similar in some ways to the 2007 regulatory definition, the NPRM's definition of "professional degree" imposed new requirements absent from the preexisting definition adopted by Congress. In contrast to the 2007 definition, the NPRM's new definition specified that a "professional degree" is "generally at the doctoral level," "requires at least six academic years of postsecondary education coursework for completion," and must have a certain "CIP" code. *Id.* The NPRM also added a new requirement that a professional degree could not be one that leads to employment where the employee is supervised by another professional. 91 Fed. Reg. at 4265. None of these requirements are part of the 2007 regulatory definition. *See* 34 C.F.R. § 668.2(b) (2025).

Further, the NPRM's proposed definition of "professional degree" included an exhaustive list of qualifying degree programs that purportedly satisfy the proposed definition. Under the proposed definition, a professional degree includes degrees in only the following eleven fields: "Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), Theology (M.Div., or M.H.L.), and Clinical Psychology (Psy.D. or Ph.D.)." The NPRM's exhaustive list of qualifying degrees was nearly identical to the illustrative list of professional degrees in the 2007 regulatory

definition, except the NPRM's definition added a Doctorate in Clinical Psychology as an additional qualifying degree. 91 Fed. Reg. at 4262–64.

B. The Final Rule

The Department issued the Final Rule on May 1, 2026. Reimagining and Improving Student Education—Federal Student Loan Program Final Regulations, 91 Fed. Reg. 23768 (May 1, 2026). The Final Rule is effective July 1, 2026. *Id.* The Final Rule wholly adopts the NPRM's proposed definition of "professional student," including its narrow construction of what constitutes a "professional degree." *Id.* at 23882 (to be codified at 34 C.F.R. § 685.102(b)). Thus, under the final rule, a "professional degree" must meet the four criteria spelled out in the NPRM, including the new criteria beyond those in the version of 34 C.F.R. § 668.2(b) in effect as of July 2025. And under the final rule, only eleven degree programs qualify as "professional degrees"—the ten degrees programs included in the 2007 regulatory definition's illustrative list plus doctoral degrees in clinical psychology—and are therefore eligible for the higher loan caps.

The final rule's definition of "professional degree" excludes many degree programs that prepare students for a specific profession, and that may qualify as a professional degree under the 2007 regulatory definition adopted by Congress, including degrees in nursing, education, public health, and marriage and family therapy. *Id.*

In enacting the final rule, the Department acknowledged that Congress required it to use the 2007 regulatory definition of professional degree. *Id.* at 23783 ("Congress defined professional student in Section 455(a)(4)(C)(ii) of the HEA by cross referencing the Department's current definition of professional degree in 34 CFR 668.2 (effectively codifying that regulatory definition), and the Department is implementing that framework in § 685.102 as a loan limit classification."). Nonetheless, the Final Rule declines to expand the definition of a "professional degree" beyond a set list of eleven qualifying degree programs. *Id.* at 23791–809.

In essence, the Department took the 2007 regulatory definition's expressly non-exhaustive, illustrative list of professional degrees and converted it into an *exhaustive* list of qualifying degree programs. In doing so, the Final Rule categorically excludes various degree programs that would qualify as "professional degrees" under the 2007 regulatory definition that Congress codified in the Act but were not included in that definition's illustrative list of examples. Indeed, the Final Rule acknowledges that it is possible for a degree program "to satisfy the three parts of the operative test" from the 2007 definition, but to still not be treated as a "professional degree" under the final rule's new definition. *Id.* at 23795. That is because the Final Rule lays new requirements on top of the 2007 definition. Under the final rule, not only must a degree program satisfy the operative test that formed the entirety of the 2007 definition that Congress adopted, but it must also "satisfy [] contextual requirements" that are never stated in the 2007 definition, including a new requirement that the degree not lead to employment under the supervision of another professional. *Id.*; *see also id.* at 23787.

Unsurprisingly, "[m]any commenters opposed the Department's approach to defining professional student, as they believed it to be too narrow," "argued that the Department was adding limitations not found in the statutory or regulatory text," and "urged the department to treat the enumerated examples as illustrative rather than bounded." *Id.* at 23783. Many commenters explained that various degree programs not covered by the Final Rule nonetheless "satisfy the 'three-part test' in 34 C.F.R. 668.2" and "that in excluding these programs, the Department is improperly narrowing Congress's adopted language." *Id.* While the Final Rule acknowledges some of these comments, it rejects them based on little more than the conclusory statement that "[t]he Department does not believe that our approach to defining professional

student is too narrow nor do we believe it should be expanded to include more degree programs." *Id.*

Finally, in the preamble to the final rule, the Department recognized that the Higher Education Act's master calendar requirement provides that regulatory changes affecting student financial assistance must be finalized by November 1 to go into effect by July 1 of the following year. *Id.* at 23770 (citing 20 U.S.C. § 1089(c)(1)). Although the Department waited until May 1, 2026, to publish the final rule, it nonetheless made the Rule effective July 1, 2026, by purportedly relying on an "implicit[]" waiver of the statutory requirement. *Id.*

C. Harms to Plaintiffs and Their Members

Plaintiff associations and their individual and organizational members are among those harmed by the Rule. Plaintiffs the American Association of Nurse Practitioners (AANP) and the National Association of Pediatric Nurse Practitioners (NAPNAP) represent nurse practitioners (NPs), a subset of advanced practice registered nurses (APRNs) who are educated and clinically prepared at the master's or doctoral level. Declaration of Jon Fanning (Fanning Decl.) ¶ 3; Declaration of James Wendorf (Wendorf Decl.) ¶ 1. Plaintiff the American Association of Colleges of Nursing (AACN) represents colleges and universities that offer degrees to become APRNs. Declaration of Deborah Trautman (Trautman Decl.) ¶¶ 1, 3, 8. Plaintiff the American Association for Marriage and Family Therapy (AAMFT) represents professionals practicing as marriage and family therapists (MFTs) and students aspiring to be MFTs. Declaration of Christine Michaels (Michaels Decl.) ¶ 1. Plaintiff the Association of Schools and Programs of Public Health (ASPPH) represents public health schools and students including those pursuing Master of Public Health (MPH), Doctor of Public Health (DrPH), and equivalent degrees. Declaration of Laura Magaña (Magaña Decl.) ¶¶ 2, 3. Plaintiff the National Education Association (NEA) represents both classroom teachers and educators aspiring to be "specialized

instructional support personnel" (SISPs), a category that includes school counselors, speech language pathologists, school psychologists, and other specified categories of qualified professional personnel. Declaration of Ronny Lau (Lau Decl.) ¶¶ 3, 15; *see* 20 U.S.C. § 7801(47).

Plaintiffs' members provide or seek to obtain advanced degrees that have historically been considered professional. Each set of degrees at issue signifies the completion of academic requirements for beginning practice in the relevant profession, signifies a level of professional skill beyond that normally required for a bachelor's degree, and generally requires professional licensure. For instance, to become licensed, NPs must complete a Master of Science in Nursing (MSN) or Doctor of Nursing Practice (DNP) program and successfully pass a national board certification examination in their population focus area before applying for state licensure. Fanning Decl. ¶ 3. These degrees accordingly signify completion of the academic requirements for beginning practice. NPs are licensed in all fifty states, the District of Columbia, and U.S. territories, and they must comply with the licensure laws and regulatory requirements of the jurisdiction in which they practice. Fanning Decl. ¶ 20; *see also* Trautman Decl. ¶ 18; Wendorf Decl. ¶ 11.

MFT degrees signify the completion of academic requirements for beginning practice, as they meet the requirements for licensure in all 50 states and the District of Columbia. Michaels Decl. ¶ 13. Public health degrees are required for entry to a range of public health professions, and public health graduates commonly pursue credentialing such as the Certified in Public Health credential. Magaña Decl. ¶ 15. SISP degrees also meet the original definition. For example, a master's degree in school counseling signifies completion of academic requirements for beginning practice as a school counselor, and a graduate of a master's program must

generally apply for and receive a license from the state to practice. Lau Decl. ¶¶ 15, 19. And each represents an advanced level of professional skill beyond that provided by baccalaureate programs. Lau Decl. ¶ 19; Fanning Decl. ¶ 19; Trautman Decl. ¶ 18; Magaña Decl. ¶ 15; Wendorf Decl. ¶ 11. The Rule's exclusion of these degrees from the professional degree definition is contrary to Section 668.2's requirements and represents a significant departure from established federal and national understandings of advanced nursing, public health, SISP educators, and MFTs as professional degrees.

Because these degrees will not be considered "professional" and they will be subject to a lower federal student loan cap, many prospective students will necessarily postpone their educational goals or decide not to pursue these degrees altogether. Advanced degrees in each field often require a substantial financial investment. Fanning Decl. ¶ 21; Lau Decl. ¶¶ 8, 22; Trautman Decl. ¶¶ 10–11; Wendorf Decl. ¶ 12. Many students "depend on federal aid to cover tuition and living expenses, and without it, pursuing a graduate degree may not be financially possible." Lau Decl. ¶ 24. Lower federal loan caps will significantly limit students' ability to borrow sufficient funds to cover the full cost of attendance. *See, e.g.,* Lau Decl. ¶¶ 23–25; Fanning Decl. ¶ 11; Trautman Decl. ¶¶ 9–12; Wendorf Decl. ¶ 12. As a result, the only option for prospective students to finance their degrees will be to seek higher-cost private loans, which would require them to pay higher interest rates, face a range of additional unfavorable terms, and forfeit access to Public Service Loan Forgiveness. Lau Decl. ¶ 21. Some prospective students may be unable to access private loans at all due to their credit history, creating a barrier to economic advancement. Lau Decl. ¶ 21.

Faced with this choice, many students will delay enrollment, reduce the scope of their educational plans, and forgo further education altogether. Fanning Decl. ¶¶ 21, 30, 34

(prospective NP students "are already reconsidering enrollment decisions, delaying educational plans, or exploring alternative educational pathways" because of uncertainty regarding the availability of financial assistance); Lau Decl. ¶ 24 ("As a working parent balancing school, work, and family responsibilities," prospective speech-language pathologist student reports that "access to sufficient financial aid and loan support will directly impact my ability to complete both degrees and pursue a career serving students and families"); Trautman Decl. ¶ 20 ("many students would need to delay or abandon their pursuit of graduate education without sufficient federal loan support to cover tuition, clinical education fees, and living expenses"). For example, the loan caps will preclude NEA member Brittany Fair from pursuing a career as a school psychologist, which requires both a master's degree and an education specialist degree. Fair Decl. ¶ 12. Because of Fair's existing debt from her prior master's degree, the new $100,000 lifetime federal loan cap for graduate degrees will make it difficult or impossible for Fair to complete the education required to pursue her chosen career path. *Id.*

Meanwhile, academic institutions and programs, including in fields that Plaintiffs represent and Plaintiffs' members, will suffer direct and immediate harms from decreased enrollment. As the Rule increases the cost of pursuing higher education and limits students' financing options, fewer prospective students will enroll in advanced degree programs offered by academic institutions, including ASPPH's public health institution and program members, AANP's university and college organizational members, and AACN's member schools with post-baccalaureate programs. Magaña Decl. ¶ 20; Fanning Decl. ¶ 27; Trautman Decl. ¶ 20. Reduced enrollment will, in turn, strain institutional budgets and impair member institutions' ability to sustain academic programs, faculty hiring, clinical placements, and student support services. Magaña Decl. ¶ 20; Fanning Decl. ¶¶ 27–28; Trautman Decl. ¶¶ 20–22.

Exclusion of each of these degree programs will also cause direct harm to Plaintiff associations. Plaintiff associations themselves will suffer immediate harms as fewer students enroll in advanced degree programs starting this fall in the fields that they represent. Michaels Decl. ¶ 16–17; Fanning Decl. ¶ 30; Lau Decl. ¶ 23, 27; Wendorf Decl. ¶ 12–14. For instance, Plaintiff AAMFT will see an immediate reduction in dues, its primary source of revenue, from a diminished incoming fall class, along with a reduction in the number of individuals purchasing training from AAMFT and attending AAMFT conferences. Michaels Decl. ¶ 17–19. As a result, AAMFT expects that when it needs to make funding and budget decisions this coming semester, it will need to reduce and eliminate valuable programming and services. *Id.*

Associations will also be required to devote substantial organizational resources, staff time, and educational programs to address harms caused by the Rule. AANP will need to respond to member concerns, educate prospective and current NP students regarding the Rule's impact, engage in advocacy and public education efforts, and attempt to mitigate anticipated workforce shortages. Fanning Decl. ¶ 23. Similarly, with student members facing an increasingly crushing load of student debt due to insufficient federal financial aid, NEA will be required to divert additional resources toward expanding its student debt counseling programs, including by rewriting trainings, webinars and websites to account for the new caps and challenges that members will face in repaying loans. Lau Decl. ¶ 27.

Universities, colleges, and other organizations are already engaged in student recruitment, admissions, enrollment planning, budgeting, faculty hiring, and program operations for upcoming 2026 academic terms. Fanning Decl. ¶ 35. Because many prospective students rely on federal financial assistance to finance their graduate education, the Rule is already creating uncertainty regarding 2026 enrollment decisions. *Id.*; *see also* Trautman Decl. ¶ 21.

LEGAL STANDARD

Section 705 of the APA authorizes a court reviewing an agency action to "issue all necessary and appropriate process to postpone the effective date of [the] agency action or to preserve status or rights pending conclusion of the review proceedings," "[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury." 5 U.S.C. § 705. In deciding whether to issue a § 705 stay, the Court considers the familiar four-factor test governing preliminary injunctions. *See Cabrera v. U.S. Dep't of Lab.*, 792 F. Supp. 3d 91, 99 (D.D.C. 2025). To obtain a preliminary injunction, Plaintiffs must establish (1) a likelihood of success on the merits; (2) that irreparable harm is likely without preliminary relief; (3) that the balance of equities tips in Plaintiffs' favor; and (4) that a preliminary injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where the government is the opposing party, the final two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

IV. Plaintiffs are likely to show that the Rule violates the Administrative Procedure Act.

Plaintiffs are likely to succeed on the merits of their claims that the Rule is contrary to law in at least two ways. First, the Department erred by reading an improper extra-statutory exception into the Higher Education Act's master-calendar requirement. Second, the Department erred by promulgating a narrow regulatory definition of professional degrees that is inconsistent with the existing definition that Congress codified into the Act.[2]

[2] Although Plaintiffs' complaint also pleads a claim that the Rule is arbitrary and capricious (Count III), this motion relies on the likelihood of success only of Plaintiffs' APA contrary-to-law claims (Counts I and II).

A. The Rule is contrary to law because its effective date violates the Higher Education Act's master-calendar requirement.

Schools need to plan for their academic years well in advance of the first day of classes. *See supra* Section I.C.; Fanning Decl. ¶ 35. Students, likewise, need to arrange their financial affairs months ahead of time before they can decide whether to enroll in an institution of higher learning, take out substantial loans to pay for their education, or to move to another state to pursue a degree that will advance their careers. Congress recognized that it would be fundamentally unfair for the Department of Education to change the rules governing student loans shortly before a new academic year, after schools and students have already begun to arrange their affairs in reliance on current law.

Congress protected these reliance interests by including a "master calendar" provision in its Higher Education Amendments of 1986, which, as noted above, guarantees that a regulation may take effect for a given school year only if it is published by November 1 of the preceding year. 20 U.S.C. § 1089(c)(1). This deadline governs "the effective dates of *all* regulations on Title IV." H.R. REP. NO. 102-447, at 77 (1992) (emphasis added); *see Bauer v. DeVos*, 325 F. Supp. 3d 74, 95 (D.D.C. 2018). The only permissible exception to this rule arises in cases where the Department designates a late-filed rule as one that schools may, in their discretion, choose to adopt, and where a school accepts that invitation. 20 U.S.C. § 1089(c)(2).

The Department of Education did not meet this deadline for this Rule. The Rule has an effective date of July 1, 2026, 91 Fed. Reg. at 23768, but to have that effective date, the Rule had to be published by November 1, 2025. The Department's publication of the Rule missed that deadline by a full six months.

The Department acknowledges that the Rule was late, but it seeks to excuse its lapse and implement the Rule for the upcoming school year by asserting that Congress *implicitly* waived

this statutory requirement. It argues that it was not possible for it to follow the task that Congress set out for it because it needed to implement the higher education provisions of the Act by July 1, 2026, but that those provisions "are not self-implementing and cannot go into effect unless the Department promulgates a final rule." 91 Fed. Reg. at 23770. The Department ordinarily is required to engage in a round of negotiated rulemaking for any rules governing the terms of student loans, followed by the publication of a proposed rule with an opportunity for notice and comment and then the publication of a final rule. *See* 20 U.S.C. § 1098a(b)(2). Because this process can take months, the Department reasons that it could not complete the negotiated rulemaking process within the deadline that Congress established for it. From there, the Department concludes that the master calendar provision is "irreconcilable" with the Act and that therefore it has been "implicitly waive[d]." 91 Fed. Reg. at 23770.

"[R]epeals by implication," however, "are not favored and will not be presumed unless the intention of the legislature to repeal is clear and manifest." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007) (internal alterations omitted). When two "statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *N.Y. Republican State Comm. v. SEC*, 927 F.3d 499, 506 (D.C. Cir. 2019) (quoting *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143–44 (2001)). Courts accordingly apply a "strong presumption" that "Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute," *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (cleaned up), and a party seeking to depart from that presumption bears a "heavy burden," *id.*, to persuade a court that Congress intended such a result.

The Department cannot meet its heavy burden to show that Congress implicitly suspended the master calendar provisions of the Higher Education Act. The master calendar and negotiated rulemaking provisions of the Higher Education Act can (and therefore must) be read to operate together with the Act, for several reasons. First, the master calendar provision itself specifies the rule of law that applies when the Department misses a rulemaking deadline—the Department may designate the late-issued regulation as one that an entity subject to its terms "may, in the entity's discretion, choose to implement prior to the effective date" otherwise required by the master calendar provision. 20 U.S.C. § 1089(c)(2)(A). Absent publication by the Department of such a designation in the Federal Register (which has not happened here), and absent consent from the regulated party, the regulation otherwise cannot take effect earlier than the beginning of the second award year after the final rule is promulgated. *See id.* And because Congress wrote one, and only one, exception into the text of the master calendar provision, the Department is not free to "read other unmentioned, open-ended, 'equitable' exceptions into the statute." *Enbridge Energy, LP v. Nessel*, 146 S. Ct. 1074, 1082 (2026). The Department, accordingly, until now has consistently followed section 1089(c), even in cases where the Department has issued its rule in response to a new Congressional directive. *See, e.g.*, 64 Fed. Reg. 58284, 58285 (Oct. 28, 1999).

Second, Congress knows how to alter the statutory deadlines of the master calendar provision if it wishes to do so, and it has done so in the past. Congress enacted statutory amendments to the Higher Education Act in December 1993, and it intended regulations implementing those amendments to govern the terms of student loans for the 1994-1995 school year. It accordingly enacted a temporary provision authorizing regulatory changes to come immediately into effect so long as they were published by May 1, 1994. Pub. L. No. 103–208,

§ 2(h)(7), 107 Stat. 2457, 2476 (1993). As "Congress knows how to write exceptions into" a statute if it so wishes, *Vertex Pharms. Inc. v. U.S. Dep't of Health & Hum. Servs*., 774 F. Supp. 3d 211, 232–33 (D.D.C. 2025), its decision not to include a similar exception to the master calendar provision in the Act must be read as a recognition that the usual deadlines for rulemakings would continue to apply. *See also Council for Urological Ints. v. Burwell*, 790 F.3d 212, 221 (D.C. Cir. 2015).

Third, if the Department believed it had good cause to depart from the usual statutory schedule for negotiated rulemakings, *but see Asiana Airlines v. FAA*, 134 F.3d 393, 398 (D.C. Cir. 1998), it could have sought to meet the master calendar deadline by issuing an interim final rule before November 1 that could become effective in the coming school year. *See* 20 U.S.C. § 1098a(b)(2) (permitting an interim final rule if the Department shows the negotiated rulemaking process to be "impracticable, unnecessary, or contrary to the public interest"); 5 U.S.C. § 553(b)(3)(B) (same); *see also Career Coll. Ass'n v. Riley*, 74 F.3d 1265, 1268 (D.C. Cir. 1996) (recognizing that an interim final rule may be published to meet master calendar statutory deadlines).[3]

Congress enacted the master calendar provision for a good reason: schools and students need ample warning before the Department of Education publishes rules that interfere with schools' operations and jeopardize students' career plans. Because the Department missed the deadline specified in the master calendar provision, the Rule cannot take effect until 2027 at the

[3] Notably, although Congress permitted the Department to waive the negotiated rulemaking provisions of the Higher Education Act upon a showing of good cause to do so, there is no similar provision permitting waivers of the master calendar provision. *Compare* 20 U.S.C. § 1098a(b)(2), *with id.* § 1089(c). So if the Department felt time pressure to implement the new statutory provisions, its recourse would have been to seek to issue an interim final rule in advance of November 1, not to ignore the master calendar provision altogether.

earliest (if at all). And because the Department believes that the higher education provisions of the Act "are not self-implementing and cannot go into effect unless the Department promulgates a final rule" that validly comes into effect, 91 Fed. Reg. at 23770, the loan maximums described in the Act for graduate degree programs and professional degree programs may not be applied for the 2026 school year, or until the Department successfully completes a valid rulemaking to implement the new statute.

B. The Rule is contrary to law because its definition of professional degrees is inconsistent with the regulation that Congress adopted into statute.

The Executive Branch "may not act contrary to the will of Congress when exercised within the bounds of the Constitution." *Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 233 (1986); *Alameda Cnty. Med. Ctr. v. Leavitt*, 559 F. Supp. 2d 1, 5 (D.D.C. 2008) ("The Executive must comply with the duly enacted commands of Congress."). The Final Rule violates these settled principles by adopting a definition of "professional degree" that conflicts with the definition that Congress expressly incorporated into the statute.

In the Act, Congress expressly codified a regulatory definition of "professional degree" and specified that it was adopting the definition "as in effect on July 4, 2025." 20 U.S.C. §1087e(a)(4)(C)(ii) (incorporating the definition of "professional degree" in 34 C.F.R. § 668.2). Congress did not direct the Department to evaluate and update the definition, nor did it give the Department discretion to do so. Had Congress intended to provide the Department authority to amend the regulatory definition already in 34 C.F.R. § 668.2, it could have provided the Department with express authority. But in fact, Congress did the opposite. If Congress had adopted the regulatory definition without referencing a specific date, then even that would have likely been best read as a constraint on the agency's discretion to revise the regulatory definition; but Congress eliminated any uncertainty by expressly adopting the regulation "as in effect on

July 4, 2025." The Department lacks any authority to change Congress's required definition through rulemaking.

And yet, the Rule makes several material changes to the definition that Congress adopted. The Rule converts Congress's adoption of an illustrative list of degrees into a closed, exclusive list; imposes new coursework duration requirements; generally limits professional degrees to doctoral level programs; adds an extra-textual requirement that professionals perform their duties free from supervision of other professionals; and adds a four-digit CIP code requirement. None of these limitations appear in the definition that Congress incorporated. The Rule thus impermissibly replaces Congress's definition with the Department's preferred policy.

Most fundamentally, the Department errs in claiming that the Section 668.2 definition adopted by Congress does not establish what it characterized as "a free-standing test" to be used to determine which programs should be classified as a professional degree program. 91 Fed. Reg. at 23783. Congress expressly directed the Department to apply the preexisting Section 668.2 definition as the relevant test. "[A]n agency literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Nothing in Section 1087e authorizes the Department to narrow the definition Congress adopted or to add substantive criteria.

Instead, the Department has added new requirements that materially alter the definition Congress adopted, including a general doctoral-level requirement, program duration requirement, requirement that the professional operate free from supervision of other professionals, and four-digit CIP-code restriction. In adopting a static definition, Congress did not provide the Department with any authority to supplement that definition with new eligibility criteria. Had Congress intended to authorize the Department to revise or narrow the definition over time, it

would not have adopted a regulation frozen in time, but that is precisely what it did. Rather than merely reference the definition in Section 668.2, Congress codified the regulation "as in effect on July 4, 2025." *See* 20 U.S.C. § 1087e(a)(4)(C)(ii). To the extent that the Department inferred that the statute's use of illustrative examples accorded it the discretion to invent new criteria for a "professional degree" beyond those stated in the statutory text itself, it plainly misunderstood Congress's instructions. Under the principle of *ejusdem generis*, a set of examples may help to clarify ambiguity in a text, but not create new requirements not otherwise found in the text. *See United States v. Turkette*, 452 U.S. 576, 581 (1981); *Tourdot v. Rockford Health Plans, Inc*., 439 F.3d 351, 354 (7th Cir. 2006) (same). Even if there were some ambiguity that the statute's set of illustrative examples could help to resolve, "all of the terms must share a common denominator to which the list may be reduced" for that list to be helpful. *Geston v. Anderson*, 729 F.3d 1077, 1083 (8th Cir. 2013); *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 196 (1st ed. 2012). The Department therefore erred by inferring new requirements for a "professional degree" that described some, but not all, of the particular degrees mentioned in the statutory text.

The Department's reliance on Congress's authority to permit agencies to "fill up the details" of a statute is therefore misplaced. *See* 91 Fed. Reg. at 23783–84 (citing *West Virginia* v. *Env't Prot. Agency,* 597 U.S. 697, 737 (2022) (Gorsuch, J., concurring) (quoting *Wayman* v. *Southard,* 10 Wheat. 1, 42–43 (1825)). Here, there was no statutory gap for the agency to fill. An agency has no power to "'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms." *Util. Air Regul. Grp. v. E.P.A*., 573 U.S. 302, 325 (2014). Agencies may exercise discretion only "in the interstices created by statutory silence or ambiguity; they must always 'give effect to the unambiguously expressed intent of Congress."

Id. The Rule rewrites the incorporated definition by converting a nonexclusive list into a closed category, imposing doctoral-level and duration requirements, and adding a four-digit CIP-code restriction. Those are not "details;" they are substantive eligibility limitations that Congress did not enact or authorize.

The Department's Rule impermissibly rewrites the definition of "professional degree" that Congress adopted. Because the Rule's professional degree definition is contrary to law, the Court must set it aside pursuant to 5 U.S.C. § 706(2).

V. Plaintiffs face irreparable harm absent a stay.

Plaintiffs and their members will suffer irreparable harm in the absence of preliminary relief. Irreparable injury is established when the plaintiff "is suffering, or will suffer, a harm that is both certain and great, actual not theoretical, and of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Drs. for Am. v. Off. of Pers. Mgmt.*, 766 F. Supp. 3d 39, 54 (D.D.C. 2025) (quotation marks omitted).

By subjecting degrees previously considered professional to the lower loan caps, the Rule will harm Plaintiffs and their members. First, the Rule will harm Plaintiffs' individual matriculating student members, who will be forced to either forgo their educational and professional goals or accept economically burdensome private loans. For example, NEA student members will face increased educational costs, exacerbating debt burdens and making it difficult to obtain degrees in specialized educational fields. Lau Decl. ¶ 23. One NEA member in Alabama explained that, "[a]s a first-generation college student and aspiring educator, caps on federal graduate loans could make it harder for students like me to continue our education," because "[m]any of us depend on federal aid to cover tuition and living expenses, and without it, pursuing a graduate degree may not be financially possible." Lau Decl. ¶ 24. Another member in Connecticut, who hopes to teach English as a second language or become a reading

interventionist, reported being "incredibly concerned" about financing her graduate degree, explaining that "[m]y only consolation was that I could avoid private loans through the federally available student loans, but with the loan-caps being introduced, I can't even rely on that." Lau Decl. ¶ 25. These students will either need to forego a specialized degree or borrow in the private sector. Lau Decl. ¶ 23. Preventing students from achieving the education they need to practice their chosen profession is irreparable harm. *Bonnette v. District of Columbia Court of Appeals*, 796 F. Supp. 2d 164, 186–87 (D.D.C. 2011) ("The lost opportunity to engage in one's preferred occupation goes beyond monetary deprivation") (citing *Enyart v. Nat'l Conf. of Bar Examiners, Inc.*, 630 F.3d 1153, 1166 (9th Cir. 2011)).

The Rule also causes significant irreparable harm by fundamentally "mak[ing] it more difficult" for Plaintiffs and their institutional members to accomplish their primary missions. *See League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). Courts have consistently found the loss of funds that force organizations to redistribute limited resources, terminate programs central to their missions, and terminate critical staff to be irreparable. *See Elev8 Baltimore, Inc. v. Corp. for Nat'l & Cmty. Serv.*, 804 F. Supp. 3d 524, 565 (D. Md. 2025) (clear showing of irreparable harm where plaintiffs "have had to, or will imminently have to, terminate or scale back [programs] that are central to their primary missions" and "must lay off staff, without whom they will be unable to carry out critical activities"); *Washington v. U.S. Dep't of Educ.*, No. C25-1228-KKE, 2025 WL 3004675, at *9 (W.D. Wash. Oct. 27, 2025); *Cmty. Legal Servs. in E. Palo Alto v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 924-25 (N.D. Cal. 2025).

With fewer students able to afford degrees, Plaintiffs' educational institution and program members will face reduced enrollment that will immediately decrease tuition revenue and strain

institutional budgets. Fanning Decl. ¶ 28; Magaña Decl. ¶ 8; Trautman Decl. ¶¶ 19-22. This, in turn, will cause disruptions that detract from these members' primary educational missions. Members will be required to scale back academic programming, delay or reduce faculty hiring, limit clinical placements, curtail student support services, and even reduce workforce development initiatives designed to address NP provider shortages and expand patient access to care. *See, e.g*. Fanning Decl. ¶ 28; Magaña Decl. ¶ 8; Trautman Decl. ¶¶ 19–22. These harms threaten lasting disruptions to member institutions. Magaña Decl. ¶ 20.

Plaintiff associations themselves will also be required to devote substantial organizational resources, staff time, and educational programs to address harms caused by the Rule, impeding their ability to accomplish their primary missions. AANP will need to divert resources from core member education programs—including educational programs that NP students rely on for licensure—to respond to member concerns about the Rule, educate prospective and current NP students regarding the Rule's impact, and attempt to mitigate anticipated workforce shortages. Fanning Decl. ¶ 23. NEA will likewise be compelled to divert organizational resources toward expanding its counseling and support programs, revising training materials and webinars, updating website guidance, and responding to increased member demand for assistance. Lau Decl. ¶ 27.

The Rule also threatens AAMFT's ability to accomplish its fundamental mission to support the education, training, and professional development of marriage and family therapists nationwide. Michaels Decl. ¶ 21. The reduction in MFT students enrolling in membership programs caused by the Rule will directly reduce AAMFT membership, resulting in an immediate decline in membership dues, its primary source of revenue, as well as substantial reductions in participation in AAMFT trainings and conferences. Michaels Decl. ¶ 17. Within the

upcoming academic year, these harms will force AAMFT to curtail critical programming and services that it provides to members and clinicians nationwide. *Id.* The resulting damage to Plaintiffs' operations and missions cannot be fully repaired after the fact and threatens lasting injury to the professions they exist to advance. *See* Wendorf Decl. ¶¶ 13-14 (discussing harms to NAPNAP).

In addition to these harms to Plaintiffs and their members, the Rule will simultaneously impose substantial and immediate financial harms on students, advanced practice nurses, educators, therapists, and public health professionals by increasing educational costs, worsening debt burdens, and discouraging entry into critically important professions. These injuries are neither speculative nor compensable through money damages. They threaten enduring disruption to Plaintiffs' operations, membership bases, and the professional pipelines they exist to sustain.

VI. The balance of the equities and the public interest favor a stay.

The balance of equities and public interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, these factors weigh heavily in favor of a stay pursuant to § 705 of the entirety of the Rule's new definition of a professional student. *First*, as described above, the effective date of the regulation violates the Higher Education Act and the definition of "professional degree" conflicts with the definition that Congress expressly incorporated. "There is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Therefore, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015).

Second, it is in the public interest to support the ability of professionals to obtain the education they need to provide crucial services to American communities in areas such as nursing, public health, marriage and family therapy, and education. Barriers that make it more

difficult for these professionals to pursue their chosen degrees will exacerbate existing shortages in these areas. For example, many nursing students will have difficulty financing their advanced education under the Rule because the actual cost of advanced nursing education often greatly exceeds the borrowing limit imposed for non-professional degrees. Trautman Decl. ¶¶ 9–12, 20. But nurses who complete advanced education help to fill critical gaps in the healthcare system, particularly in rural and underserved communities that already face provider shortages and rely heavily on advanced practice nurses for access to care. *Id.* ¶¶ 23–24.

In addition, 160 million Americans already live in an area where there is a shortage of mental health professionals. Making it more difficult for prospective students to pursue a career in marriage and family therapy will worsen this problem, especially in rural communities and community health care settings. Michaels Decl.¶ 6; Comment Letter from Christine Michaels to Nicholas Kent 6-7 (March 2, 2026), https://perma.cc/MMD7-LCJV. Persistent gaps also plague the public health workforce across multiple occupations and jurisdictions, which limits the country's ability to investigate diseases, detect hazards, and respond to emergencies, before and during public health crises. Magaña Decl. ¶ 4 (citing GAO-25-107002, *Public Health Preparedness: HHS and Jurisdictions Have Taken Some Steps to Address Challenging Workforce Gaps* (Jan. 29, 2025), https://perma.cc/474T-HDF9). The Rule's definition of "professional student" will significantly limit students' ability to borrow sufficient funds to cover the full cost of attendance at public health schools. *Id*. ¶ 9. And teachers seeking to enter important specialized professional roles in the education field will face barriers as they seek to finance their educational pursuits. Lau Decl. ¶ 23. If fewer people can fill desperately needed specialized support roles in schools, the increased pressures on classroom teachers will exacerbate the nation's existing teacher shortage and retention crisis. *Id*. ¶ 14.

Defendants acknowledged these costs but failed to consider them when implementing the definition of "professional student" in the Final Rule. *See* 91 Fed. Reg. at 23795, 23811–12, 23816, 23856. In contrast, courts can and do weigh such impacts when considering the equities and the public interest. *See, e.g.*, *Harris County v. Kennedy*, 786 F. Supp. 3d 194, 221–22 (D.D.C. 2025) (public interest in funding activities aimed at minimizing the spread of infectious diseases supported plaintiffs' request for injunction challenging HHS' termination of grants); *Massachusetts v. NIH*, 770 F. Supp. 3d 277, 326 (D. Mass. 2025), *aff'd*, 164 F.4th 1 (1st Cir. 2026) ("a preliminary injunction would preserve public health, and by extension, serve the public interest").

When weighed against the irreparable harm to Plaintiffs and the American public caused by the limited definition of professional student in the Final Rule, both the balance of the equities and the public interest favor issuing a stay.

VII. The Court should stay the Rule's new regulatory definition in its entirety and enjoin the effectiveness of the student loan caps.

The Court should stay the entirety of the Rule's new definition of a professional student. The new regulatory definition's defects are not limited to its applications to certain professions. Rather, the regulatory definition is unlawful across the board. In addition to issuing a stay, the Court should enjoin the effectiveness of the loan caps until the Department of Education conducts a new rulemaking that is consistent with the statute.

The appropriate remedy under 5 U.S.C. § 705 is a stay of the Rule. *See Make the Rd. N.Y. v. Noem*, No. 25-5320, 2025 WL 3563313, at *35 (D.C. Cir. Nov. 22, 2025) (Millett and Childs, JJ.). The APA authorizes a district court, in reviewing agency action, to grant "[r]elief pending review" that includes "all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings,"

which encompasses a stay. 5 U.S.C. § 705. A section 705 stay can be limited to a severable piece of a rule, leaving other parts to take effect. *Make the Rd. N.Y.*, 2025 WL 3563313, at *35. But courts will sever "a portion of an administrative regulation only when [they] can say without any substantial doubt that the agency would have adopted the severed portion on its own," such as when the provisions "operate entirely independently of one another." *Interstate Nat. Gas Ass'n of Am. v. Pipeline & Hazardous Materials Safety Admin.*, 114 F.4th 744, 753 (D.C. Cir. 2024) (cleaned up).

In promulgating the Rule, the Department claimed that each regulatory change is "discrete" and "independent" from the other changes in the Rule. 91 Fed. Reg. at 23769. The Department stated its belief that the classification of professional degrees is severable from the rest of the Rule and, moreover, that "if a court disagrees with the Department's classification of a particular degree or degrees, the Department intends for its classification of all other degrees to survive and remain in effect." *Id.* at 23771.

But the Rule's classification of professional degrees cannot be severed across applications to different professions.[4] The Rule's defects—violation of the master-calendar requirement and inconsistency with the applicable statutory definition—infect the entirety of the new regulatory definition. Although courts may sever a rule "[i]f parts of a regulation are invalid and other parts are not," *Bd. of Cnty. Comm'rs of Weld Cnty., Colorado v. EPA*, 72 F.4th 284, 296 (D.C. Cir. 2023), staying the regulatory definition as to some professions and not others would not result in severing between the valid and invalid parts of the Rule. The application of

[4] Plaintiffs do not dispute that the definition of "professional degree" is severable in its entirety from the other parts of the Rule, such as the parts of the Rule that implement the phasing out of the Grad PLUS loan program or addresses income-based repayment plans. 91 Fed. Reg. at 23768–79.

the regulatory definition to one profession is "intertwined," and not "entirely independent[]" of, the application of the definition to all other professions, *Davis Cnty. Solid Waste Mgmt. v. EPA*, 108 F.3d 1454, 1459 (D.C. Cir. 1997), because they suffer from the same legal deficiencies.

Upon staying the Rule's new regulatory definition of a professional degree, the Court should also issue a preliminary injunction that prohibits the Department from applying the new student loan caps until the Department issues a replacement rule that is consistent with the statute. The Department has stated that the Act's provisions are "not self-implementing and cannot go into effect unless the Department promulgates a final rule." 91 Fed. Reg. at 23770. In that case, vacatur would leave the new student loan caps unimplemented—and the Department cannot lawfully apply the caps until it performs a lawful new rulemaking. Injunctive relief would provide the necessary certainty to the student loan program for this upcoming academic year, providing "meaningful practical effect independent of [] vacatur." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010).

CONCLUSION

The Court should grant Plaintiffs' motion and enter the proposed order.

Respectfully submitted,

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