A new Trump Administration rule restricts which organizations qualify as engaging in public service. Unless an organization qualifies, its employees won't benefit from student loan forgiveness programs. That would cut into their workforce. On the face, the standard seems reasonable: organizations must "not engage in activities such that they have a substantial illegal purpose." But when you dig beneath the surface, the whole rule turns out to be legally dubious and ideological to its core. It's not only environmental nonprofits. Even government agencies could be blacklisted.

According to the official Fact Sheet, unlawful conduct consists of the following random collection of activities: "aiding and abetting violations of Federal immigration laws, supporting terrorism or engaging in violence for the purpose of obstructing or influencing Federal Government policy, engaging in the chemical and surgical castration or mutilation of children in violation of Federal or State law, engaging in the trafficking of children to States for purposes of emancipation from their lawful parents in violation of Federal or State law [is this actually a thing?], engaging in a pattern of aiding and abetting illegal discrimination, and engaging in a pattern of violating State laws."

Notably, when you look at the rule itself, you find that only relatively minor violations of state law qualify: "(i) Trespassing; (ii) Disorderly conduct; (iii) Public nuisance; (iv) Vandalism; or (v) Obstruction of highways." (Oddly, they left out littering and jaywalking.) Murder and robbery are fine, as are fraud and theft. Also, it's OK to do these things in D.C., just not across the line in Maryland or Virginia. The sloppy language makes you wonder whether any actual lawyer was involved in drafting this.

If you ask why this particularly grab bag of misbehaviors was selected, the agency itself says the answer is simple: they were singled out by President Trump. That's also where they got some of the weird features of the rule, like a definition of "child" that includes 18-year-olds who are legally adults.

There are two obvious legal problems with the rule. One is that the statute itself says what qualifies as a public service organization, and the definition doesn't include any reference to unlawful conduct. Statutory definition is simple. It covers government organizations and tax-exempt charities engaging in certain activities. Where does the agency get the power to add to this definition? Not clear. The agency refers vaguely to its general rulemaking authority but — suspiciously, to my mind — doesn't include any specific citation. Did Congress really intend to give the

Department of Education power to decide that some state and local governments have “unlawful purposes” and don’t qualify as providing public service?

The other obvious problem is the utter arbitrariness of the rule. There’s really no effort to explain why these forms of misconduct were singled out, except that these happened to be the things that annoyed the President on a given day. The agency doesn’t cite evidence of a significant number of government or charitable organizations with unlawful purposes, or that any such organizations have a significant number of employees benefitting from student loan forgiveness. This isn’t much of a foundation for making thousands of organizations go through an annual certification process. Nor is it clear why we should want to deny loan-forgiveness to workers who *are* performing public services and aren’t doing anything remotely unlawful, just because o people somewhere else in the organization might up to no good.

It would be tempting to dismiss this rule as silly, but it has real potential to do harm. Why go through all the trouble of adopting the rule unless you plan to use it? Immigration groups are probably the most at risk, but environmental organizations aren’t exempt. The Trump Administration’s definition of “unlawful discrimination” is very broad and could catch almost anything relating to diversity or equity. Its definition of domestic terrorism also has some worrying areas of vagueness, such as covering “radicalization” efforts. Moreover, government programs could also be caught in the net. A city’s environmental program could be collateral damage if the Feds go after sanctuary cities for obstructing immigration enforcement.

It’s just as well that the rule is so clearly unlawful. Hopefully, it will never reach orbit.