

NASFAA's "Off the Cuff" Podcast – Episode 322 Transcript

OTC Inside the Beltway: Mass Layoffs at ED, Chances of a Shutdown, and the PSLF Executive Order

Hugh Ferguson:

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Beth Maglione:

Hello, and welcome to another episode of NASFAA's Off the Cuff podcast. I am Beth Maglione, NASFAA's interim president and CEO.

Karen McCarthy:

I'm Karen McCarthy, from NASFAA's policy team.

Allie Arcese:

I'm Allie Arcese, from NASFAA's communications team.

Hugh Ferguson:

And I'm Hugh Ferguson, also from our communications team.

Allie Arcese:

Hey, friends.

Karen McCarthy:

Hey.

Allie Arcese:

How's it going?

Karen McCarthy:

Hey. Little busy. I don't know what the right answer is to that question.

Beth Maglione:

I know. Well, we're recording this on Thursday, March 13th. By the time it comes to your ears, everything may have changed. We're going to give you a moment in time update on where things are right now. It has been a crazy few weeks just with so many changes happening. And we were also just saying right before we started the recording that, especially me, I have not had time to do a lot of prep for this podcast, so we're kicking it back old school style to the early days where everybody would just come in and spitball. And maybe we'll do a little bit of that today.

Allie Arcese:

Yeah. Our agenda when we first started this podcast was literally just three or four bullet points of topics we wanted to hit, and that was the preparation.

Beth Maglione:

I've prepared maybe even less than that, so set your expectations accordingly everyone. The other thing we were saying is, and I don't know, this reminds of... It actually reminds me of the early days of COVID a little bit. So being here in DC, it's been like, I'm going to say apocalyptic. Because it's not just everybody in their... It's like, there's so much happening inside the federal government right now. So that's happening in my professional world, all of your professional worlds. Everybody who touches the federal government is impacted by all the changes happening right now. But it's my neighbors and friends. But the funny thing is, yesterday, it was the first really sunny spring day. So we're all just walking around like zombies outside, pale and confused about the world. And it really does remind me of-

Karen McCarthy:

Yeah, it was like that. The same time of year at the beginning of COVID.

Allie Arcese:

Come out of your house that feels like a cave and you're blinking in the sunlight. What is this?

Beth Maglione:

It's so similar in a weird way. Nobody knows what's coming next.

Allie Arcese:

But the sun was out and it felt great. We played in the driveway with our neighbors. My kids played.

Beth Maglione:

It's okay if you played, Allie.

Allie Arcese:

Yeah, I played too. Yeah. And that was nice. It always feels good to look forward to the warmer weather.

Beth Maglione:

We have several topics to dive into. It's been a pretty impactful week for those of us that work for and around the federal government, as we just talked about. On Tuesday evening, March 11th, newly appointed education secretary, Linda McMahon, announced plans to lay off nearly half of the department staff across all divisions as part of a reorg that was intended to improve efficiency and accountability. Layoffs were communicated by email. And the department was closed, people were instructed not to come to work on Wednesday. Today's Thursday, so this is all pretty fresh.

Karen McCarthy:

I like how you [inaudible 00:04:06]-

Beth Maglione:

What we know.

Karen McCarthy:

Checking the calendar there, Beth. You're looking at the calendar. Today is Thursday.

Beth Maglione:

What day is today? Yes.

Allie Arcese:

I asked Paschal that last night after we got the kids to bed. I was like, "What day is it? I don't remember."

Beth Maglione:

We're all just in a fugue state. Yeah, obviously that set off a million questions, some of which have been answered to some degree, many of which we still don't have answers to. Maybe that's where we start. What do we know? What do we not know?

Allie Arcese:

We know a little bit about... Well, not a little bit. We know quite a bit more about how many people from which divisions were laid off. And going as far as by just raw numbers, Federal Student Aid actually had the most employees laid off. I think it was around 325 to 326. Percentage-wise, I don't know if that was the largest cut to a team. Probably not.

Karen McCarthy:

I think civil rights might've been percentage-wise.

Allie Arcese:

Yes. Yeah, that sounds right. The Office of Civil Rights. But I think the percentage for FSA was around 24%, which is pretty significant.

Karen McCarthy:

And I think, and that 300 number is just in what happened on Tuesday night. There were also the two previous rounds of the voluntary programs. And I don't know that we have final numbers on the take-up rate for those.

Allie Arcese:

I remember it being reported. I think that it was over 100 people from FSA taking the buy-out offer. I think that sounds right.

Karen McCarthy:

So, big numbers.

Allie Arcese:

Yeah.

Karen McCarthy:

Big numbers.

Allie Arcese:

Yeah. The Office for Civil Rights was hit pretty hard. FSA was hit pretty hard. And the department, they acknowledged this in their announcement. Almost every division was impacted by the layoffs. We do know a little bit more about the distribution of those layoffs. One thing we don't know is details about how work will be redistributed, and I think that's a big question, concern for us.

Beth Maglione:

Yeah. Well, let me step back just a little bit and say, NASFAA obviously works very closely, as do our member institutions, with employees at the Department of Ed. And you will have seen that we released a media statement and article in which we expressed concern that... And what the concern really was, was not about the political underpinnings of these decisions. The concern is about the feasibility of the work getting done. And we just have a ton of questions, as I think our campuses do, about, who is remaining? Who will do? What are the contingency plans? Who is my contact? The questions just go on and on. And I don't know, unfortunately, that we'll be able to answer all of those today, but I did see specific whole teams were closed. I think all of the regional training offices. Is that a true statement? With a couple exceptions perhaps.

Karen McCarthy:

I think there are.

Allie Arcese:

I think Philadelphia and Chicago was what I was hearing. But all of the other regional offices were closed, which, that's big.

Beth Maglione:

Right. To say the impact on schools won't be felt, I think that goes without saying that this will be felt by our member institutions, and we just don't know what the plans are to fill in the gaps. And would like to know.

Karen McCarthy:

Yeah. And I think that was the concluding part of our statement was if there is a plan for how all the work will get done, we encourage the department, urge the department to release that publicly. We had a lot of media inquiries on this yesterday, and one of the points that I was trying to make was, on the one hand, Secretary McMahon in her statement, said that they don't expect any disruption. They'll still be able to deliver on all of their statutory programs. And she mentioned student loans and Pell grants in the long list. And that seems incongruent to us with 50% layoff. And so that's our question. How exactly, what are the plans to deliver without any disruption? Because 50% is pretty significant.

Allie Arcese:

It seems to be an act now and figure it out later approach.

Karen McCarthy:

The other thing I was thinking about, because we mentioned the voluntary resignations. And actually, I have in my notes that there were about 600 voluntary resignations. Don't quote me on that. But I think one of the tricky parts about voluntary resignations is because they're voluntary, the department

doesn't know until after the fact who's going to opt in or not. I would think if it was just voluntary resignations, that would already require some reshuffling. Because you might have eight out of 10 people on this team opted in, and on this team nobody did. Do some of team B need to move over to team A? Because the work that needs to get done is all still the same. I would imagine that there would be some needed reshuffling even with only voluntary resignations. And since this came so quickly after the voluntary resignations, it seems like a lot to have a well-thought-out plan and be able to do this that fast.

Beth Maglione:

Yeah. You touched on this a little bit. The other thing is that... So, reductions in force happen in all kinds of organizations and all kinds of industries, even very large organizations like the Department of Education. I think it is fair to say that typically there is an analysis done of maybe who is underperforming or what areas are no longer needed. If such an analysis ever took place, we have no evidence that has happened. And in the absence of that, one of the things that I'm seeing a lot in our communities is folks who've dedicated their careers to public service have this feeling that those careers are now worth very little. Or that by being RIFed, by being affected by these layoffs, it's an indication that they have underperformed.

And I think that is troublesome, of course, because we rely on our federal partners. And listen, NASFAA has also called out moments when we really felt our federal partners could do better. You will recall during the early days of FAFSA, we were very public about areas where we believed our federal partners could do better. But to turn around and imply that folks who've dedicated in some cases their entire professional lives to public service are all not worth the time they've put in, I'm seeing a lot objection to that. Even amongst our membership. They know these people. They've worked closely with them over the years. It's a very emotional time too for our members or anybody who has worked with colleagues at the department.

Allie Arcese:

Yeah, agree. Where do things go from here? I know the department did say, that as of March 21st the folks who were included in the reduction in force would be put on administrative leave on the 21st, and then their service would formally conclude on the 31st.

Karen McCarthy:

Yeah, I did see that. Those were the official dates that I saw. But I also saw yesterday... Again, I'm looking at the calendar, yesterday was Wednesday. When the Department of Ed was closed, don't come to any offices, but they were still open. I thought that people were told that they should continue to work at home yesterday. But I had also seen some public posts that some folks affected by the layoffs did not have access to systems that they normally had access to. So it seemed that in practice that there were some immediate steps taken to disconnect those folks.

Allie Arcese:

Yeah. Well, to some extent it seems like a miscommunication too. Were the systems shut off for everyone or just the folks who had been laid off? There also, as of this morning, I guess, is a lawsuit from a coalition of 21 Democratic Attorneys General suing the administration over the reduction in force notices. And that lawsuit says that the dismissals were illegal and unconstitutional. Does anyone else want to sum that up?

Karen McCarthy:

Yeah. I was looking at that right before we were recording, in fact. To see, what's the claim? They're illegal in what way? And I only saw one article so far, so I imagine there will be more details about this lawsuit coming out. But it basically was making the claim that it's illegal because the Department of Ed can't perform its statutory obligations if this cut continues. Or stays, I guess I should say. But it didn't necessarily cite any individual law. I was really curious if the department could do these layoffs in the manner that they did them in accordance with the law. And I didn't see any mention of that. Again, I just read one article so far, so I'll be curious to read more about the lawsuit and what the specific claims are.

Allie Arcese:

And this is just a genuine question. If this lawsuit went all the way, and say the layoffs were reversed, how many of those people are actually going to go back at that point? This could drag on for months. The impacts are going to be felt either way.

Karen McCarthy:

Right.

Allie Arcese:

Yeah. So, still a lot to come on that.

Beth Maglione:

Yeah. Well, one other little glitchy thing that happened, and cause and effect are unknown here. But at the same time that all of these changes were being announced, we saw some instability with the FAFSA forum, which was quickly reported by our membership. Do we have any insight we can provide? What have we uncovered? Of course, we immediately reached out to all of our contacts.

Allie Arcese:

Not a lot.

Karen McCarthy:

Yeah. The thing that I wonder is that I haven't seen that the FAFSA team, the new FAFSA team that was just created in December, was directly impacted by the reduction in force yesterday. A lot of that team does still seem to be intact. That is positive news, because everybody's very concerned about the FAFSA and the rollout coming up this October 1st. But I don't know how the FAFSA team might be indirectly impacted, in that there are lots of other teams within the department that interact with the FAFSA team. And I think of it thinking of in our NASFAA world. And that Allie is from the communications team and I'm from the policy team. And if we were to have a layoff here at NASFAA and Allie's team was wiped out and the policy team remained.

Allie Arcese:

What do you know, Karen?

Karen McCarthy:

I know nothing, but I'm just thinking about the interconnections between teams. NASFAA could say, "Our policy team is continuing on its work just like it always, nobody has been laid off on the policy

team." But we know that we work so closely with the communications team, so we might do all this work, but we don't know how to push things out on our website or how to develop press statements and get those out on the air. So we can't really fulfill all of our policy team work without the communications team. So that's what I'm wondering specifically what happened yesterday with the FAFSA.

That if we know the systems behind it are all baked across Federal Student Aid. And if perhaps when there were some challenges yesterday, and again, we don't know what the challenges were. That if they were scrambling a bit because perhaps the people who work on the FAFSA team aren't the people who would be troubleshooting when something goes awry on the tech side of the FAFSA. I think of it in that way, that you don't have to cut the FAFSA team necessarily to impact the stability of the FAFSA.

Allie Arcese:

I think that's a totally reasonable conclusion to draw. Again, we don't know why it went down in the first place, and we don't know who was working to fix it. But-

Karen McCarthy:

And I can't imagine how it was to work within the Department of Ed yesterday, and that they were all scrambling.

Allie Arcese:

The timing is definitely not ideal.

Beth Maglione:

That's a hypothesis. But as good a hypothesis as any other, I agree. I agree, Allie and Karen. That said, maybe I don't need to say this out loud, but I'm just going to say it anyway. Obviously there is a huge amount of consternation amongst our membership. I think the feeling is that we just got FAFSA back on the right track.

Karen McCarthy:

I know.

Beth Maglione:

And it was so painful. And to think that we could be derailed again just when things seemed like they were ending in the right direction. I think that's a bitter pill that I certainly saw communicated from members. And so, we don't know yet.

Allie Arcese:

Yeah, our members are very strong and pulled through last year's FAFSA rollout, but I don't know if we could do that again. Or, nor should they have to go through that again. Or anything close to that.

Beth Maglione:

It's top of mind, that's for sure. We will be carefully watching all things FAFSA as we try and sort out what the impacts of layoffs will be.

Allie Arcese:

But as of right now, it seems that whatever was going on has been resolved in the FAFSA's backup up and running again.

Karen McCarthy:

Yes, that is-

Allie Arcese:

As of 12:32 PM on Thursday.

Karen McCarthy:

Perfect. Perfect.

Allie Arcese:

Mark it. Yeah. All right.

Beth Maglione:

Well, you would think that would be the only thing happening in the world, but no, indeed there's many other things happening, including the federal budget process, including a looming potential shutdown of the federal government. Hugh, do you want to kick us off here and we talk about what we know?

Hugh Ferguson:

Yeah. It feels like we just had this conversation a few months ago, because we did. And it seemed very likely that we could have had a shutdown towards the end of last year, but that was averted, and instead they picked March 14th as their next date to have a fight over what the federal spending limits would be. Earlier this week, on Tuesday evening, shortly before Ed put out their update on the RIF, the house Republicans were able to pass a continuing resolution that would keep the government funded at fiscal year 2024 levels through the end of this current cycle, which is September 30th. And there were some anomalies attached to this bill. Some of it had to do with defense spending. Another had to do with the ability of Washington DC, the city, to set its budget. And so there's been a lot of concerns over that.

But Republicans were able to pass it on a near party line vote with only one Republican voting against it and one Democrat voting for it. And so this is the first time that house Republicans have been able to get a spending bill through their chamber, pretty much just relying on their members. Normally they need a pocket of Democrats to get a spending bill through, but this time they were able to get their own measure through to the Senate. Now we remain in a very fluid dynamic where in the Senate they need 60 votes to get this legislation through. And where things stand right now, at a little after noon on Thursday, is that there's currently a vote scheduled for Friday morning. At which time we'll see how things pan out, whether Democrats decide to give some votes to help Republicans move this forward, or if they do not, they've decided that a shutdown would be better than the possibility of this spending bill going through and giving the administration more flexibility to continue carrying out some of their fiscal agenda.

Karen McCarthy:

It seems that I was... Thank you, Hugh. I was trying to... When all this went down earlier this week, I was like, if this is just a CR, and I saw that the Republicans were claiming that it was clean. Meaning, we're

just continuing, and that's a continuing resolution. Why do the Democrats hate it so much? Was one of the questions. I was like, why all the resistance? And there were a couple things that I saw. One is that they felt like they weren't involved in the process at all, that it was purely a Republican bill. One of the other concerns that I thought was super interesting, and this is complete budget weediness, is that a lot of programs, including all of ours, didn't have the specific funding levels laid out in the CR that we would normally see. And there was a lot of concern amongst the Democrats that if those funding levels aren't laid out there that would be...

They didn't call it a loophole. I think of a loophole like an opening for Republicans during the CR time and the administration to make changes to funding levels. And then the Democrats would not have much objection because, well, they weren't in the CR. You voted for that CR. And that they might either take back any funding, redirect any funding, because it's not clearly laid out in the CR which programs have which dollar amounts attached to them. I don't know if that has happened before, but it's something that caught my eye. I was like, oh, now that makes more sense, and now I can understand why there's this butting of heads between the Democrats and the Republicans.

Hugh Ferguson:

Yeah. And I think this is why we saw some reporting from the whip effort in the house to try and get Republicans aligned with supporting this bill. And a lot of Republicans who previously had always voted against CRs, had been given assurances that this one was different than others. And that, I believe it was the vice president and some members from the Office of Management and Budget, saying that the administration could have more flexibility with how they utilize funds. Which gets into a whole weediness of the budgetary process, which I think is the term impoundments has been thrown around, in which the White House could then redirect funding in a more flexible manner.

Karen McCarthy:

Right They could redirect or withhold.

Beth Maglione:

Wow. That's...

Karen McCarthy:

And then on the other side... So it does feel like the Democrats are between a rock and a hard place here, because it's clear why they wouldn't want to do that. Then the alternative is to let the government shutdown happen. But I think they also... They have just the standard concerns about not wanting to shut down the government that applies in all circumstances, and that nobody likes government shutdowns. In Congress they're all worried about who would end up taking the blame if there is a government shutdown from the public. I think in this particular case, the Democrat's concern is that during a shutdown, then the Trump administration gets to decide who are essential employees, who are not essential employees. So they're worried about the leeway that gives the administration during that shutdown period as well.

Beth Maglione:

We've tread this road before, we've seen this almost happen and then actually happen in years past. And I do know that there are certain programs considered essential, and the employees who would administer those programs are considered essential. In terms of impacts to the student aid programs, I want to ask the question of what might be impacted and what probably would not usually be impacted.

I do think there's this other question of, given the existing chaos happening inside all the federal agencies, but in our case we're really just got our eyeballs focused on the Department of Ed. A federal shutdown or plans for a federal shutdown are chaotic to start with. I think that the opportunity for increased chaos is really present. This could be much more impactful just because of people not understanding who's doing what at the current moment. Yeah, what are the potential impacts, I guess?

Karen McCarthy:

Yeah. And I don't think... I just checked with Hugh right before we got on here. We haven't seen the shutdown contingency plans from the department of... I don't know, are they out from any federal agencies yet, Hugh?

Hugh Ferguson:

I think there was-

Karen McCarthy:

I know you're only [inaudible 00:27:43]-

Hugh Ferguson:

... one that might've dropped. I believe the EPA might've had a contingency plan go out. So they-

Karen McCarthy:

Okay. As a reminder, whenever we're getting close to a government shutdown, all of the federal agencies have to release what they call a contingency plan, which sets out what will continue to happen if there is a shutdown, what is considered non-essential, what functions will stop. And we haven't seen one yet for Ed. I don't think that's unusual. They do usually come out very close to the shutdown in hopes that-

Allie Arcese:

Yeah, I was going to ask if there's any timeline attached to it for when they are required to.

Karen McCarthy:

They're pretty close, aren't they, Hugh?

Hugh Ferguson:

Yeah. Especially if there's still a chance... If a vote had failed in the Senate, I think one might've come out by now. But that there's still a bill on the agenda that could prevent one, I think it could be even longer. And plus, with the offices being closed yesterday and McMahan only being in for a week, I don't know what the [inaudible 00:28:50] dynamics are for getting that document-

Karen McCarthy:

... moving pieces.

Hugh Ferguson:

... put together.

Karen McCarthy:

Yeah. Okay. And the Senate, one of the things that they are deciding is whether they vote for the CR as it is, the full year CR. I think there was also an alternative CR that would bring us until some point in April. Is that right, Hugh? I think the 11th.

Hugh Ferguson:

Yeah. Supposedly, Democrats have been floating a 30-day extension to continue negotiations. But when the House passed their CR, they went into recess, and they're scheduled to be on recess for the week. It's unclear whether their members are even in town. This was an effort to stiff arm the Senate and into just taking what the House did and making it so that they couldn't amend the bill without the risk of a shutdown actually taking place before they could get their members back. So some posturing has been happening here.

Karen McCarthy:

Yeah. Because Speaker Johnson would have to call all of his members back. And this is tomorrow night the deadline. Okay. Yeah. I diverged there. Beth, you were asking about if we do have a shutdown and what has happened in the past. Again, with all the disclaimers about how this might operate in a little bit of a different way, who knows? But yeah, we would at some point see a contingency plan. What has happened in the past when we had shutdowns, without getting too specific, I always think of it as systems will continue to run, but people will not be available to ask questions of nor assist if any systems go awry.

I think about what happened yesterday with the FAFSA. In that the FAFSA site would normally stay up, but if there are any issues, then you need that human intervention to get it back on track. And that's the thing that would normally not be available during a shutdown. Now, I don't know, I'm not assuming anything about... I don't know, maybe the FAFSA is considered an essential function and they would have staff. I don't know. But generally the systems run and schools can draw down money, but if there are any issues, then there aren't a person all around to help schools resolve any issues or keep websites up if they crash and things like that. That has been how it has gone in the past, I should say. Have I provided enough qualifiers?

Beth Maglione:

Yeah. Yes. All right, obviously we'll be keeping an eye on all things federal budget, all things Department of Ed. The other item that is new, since the last time we spoke into your ears, is we've all been waiting for more than a month now for a rumored executive order that would ask the Department of Ed to wind itself down, or figure out a plan for winding itself down. What we got in the meantime was a huge layoff, which probably is intended to get to the same end result. But what we did not expect was that late last Friday night the White House issued an executive order related to the public service loan forgiveness program. At around 10 PM which... I'm sorry, just to interject. We typically have seen in the past news sometimes get dropped on Fridays. And at NASFAA it's even got its own name, the Friday news drop. This one was particularly egregious at 10:00 PM on a Friday. I just want to say for the record, that was not cool.

Allie Arcese:

And that's a thing in the journalism world too, a Friday news dump, especially before a holiday weekend.

Hugh Ferguson:

Well, and just the rollout of this was so bizarre. Because on Friday at 2:00 PM, rumors were popping up this was going to happen. And so there were a couple of White House events being hosted. One of them was about FIFA, where the White House was signing some executive orders related to security around the-

Karen McCarthy:

Oh, yeah. They established some task force about the World Cup.

Hugh Ferguson:

They established a task force, they had a trophy presentation, they unlocked... It was a whole-

Karen McCarthy:

And you're watching it and you're like, what am I watching? And why am I here?

Hugh Ferguson:

I'm watching this whole thing. This man is holding a golden key finagling with this device. And I'm like, where's the executive order about PSLF? What is going on? And the President had made statements about how he had apparently signed something related to it, but there was no paperwork or anything. Maria and I spent most of the day just waiting for this text to finally drop, which didn't happen until 10:00. And the only reason I saw it at first was because a member from the House put out a press release about the executive order. And then I was like, did they just accidentally send this, because the order's still not out yet and they're still looking? And then within five minutes the text of the order became available. And so this was very strange, but did happen.

Beth Maglione:

Yeah. Serious whiplash around all of this too. Do we want to talk a little bit about what the content of this EO was?

Karen McCarthy:

Yeah. In the PSLF executive order, President Trump directed the Department of Education to make changes to the PSLF program, to propose regulatory changes to rescind eligibility from organizations engaged in what they call illegal activities. And in the EO, they had a list of things that they would be considered to be substantial illegal purposes, including they mentioned illegal immigration, human smuggling, child trafficking, pervasive damage to public property, and disruption of the public order.

That was the extent of the EO. But I think that in terms of next steps, you have to understand what it says in the law about PSLF, what Congress did with PSLF versus what happened during the regulatory process. Because President Trump, Secretary McMahon, the Department of Education can really only make tweaks legally through on the regulatory side of things. And when PSLF was authorized by Congress, it is in the HEA.

And in terms of eligible employment, how they have it laid out is they say a public service job includes the following. And there's a giant paragraph that includes categories of employment. It says emergency management and public healthcare and things like that, but not any specific definitions of specific employment that would fall into those categories. And then at the end it says, or employment at a 501C3 as designated by the IRS and the Internal Revenue Code. Those are two separate categories. The

categories of employment fields, and then there's 501C3s. And then there's another category for faculty at tribal colleges, it's not really relevant to this conversation.

What happened when the PSLF program first went through negotiated rulemaking is that the negotiated rule makers established more specific definitions of those categories of employment. And what we have in the regulations are this employment is considered to be under law enforcement, and this type of employment is under public health. And they parsed that out a little bit more. And all of that is typical. That's what we generally have seen. The law has the broad guardrails around things, and then the regulatory process sets out the specifics. And that is what happened during the regulatory process, that first happened back in 2008. The program was created in 2007, they went through the regulatory process in 2008. And then the 501C3s were carried over directly from the law into the regulation.

My read of what this order is directing the secretary to do would be to look at the regulations and the areas where they can make tweaks, which would be those categories of employment. But I have had some people ask about 501C3s, and that seems to me... Not a lawyer, as I say in every podcast these days. That seems less to be within the Department of Education's purview, because 501C3s are very specifically mentioned as eligible employers in the law.

The other categories I think could go through the regulatory process and be further tweaked, defined, expanded, or restricted. That is definitely within the Department of Ed's purview. I have seen some coverage though that says that the Department of Ed is mandated in all cases to go through the negotiated rulemaking process. And when you look at the law around negotiated rulemaking, it does say this is the way that we get our rules. So our members who are all up to speed on negotiated rulemaking, you know I always describe it, negotiated rulemaking is how we get our regulations that apply to our programs. But in that section of the law, it does say "unless the secretary determines that applying such a requirement", meaning negotiated rulemaking, "with respect to given regulations is impracticable, unnecessary, or contrary to the public interest." That does seem like that is a potential way around the negotiated rulemaking process. That's just something to keep in mind. We did see that the department posted, I think on LinkedIn. Is that where it appeared originally?

Beth Maglione:

It was on X. Well, and on LinkedIn, yeah.

Karen McCarthy:

Which is an unusual place for them to post something like this. Where they said, "Hey, there's an executive order. The secretary is determining how to carry out the executive order. There are no immediate changes. Borrowers should carry on." Or, I don't know what the exact words were. But basically said we're evaluating, nothing is changing immediately.

Beth Maglione:

And I guess, again, you've got four non-lawyers here, but I think we can expect there may be some legal action related to next steps on PSLF. Potentially digging into some of those legal gray areas that you just talked about.

Karen McCarthy:

Yeah. And I think that regulations change all the time. And in terms of eligibility for various programs, sometimes the eligibility expands, sometimes it constricts. And one of the challenges, particularly when you're talking about restrictions, is what is a reasonable effective date? And PSLF, because of how the program is set up, when you're talking about effective dates gets really challenging very fast. Because

it's, by definition, at minimum a 10-year endeavor for anybody to do it. And people can certify that their employment is eligible along the way, but it's not required. So some people might have done it, some people might not. It's not a requirement, so I don't know how you can penalize people who didn't do it. And it's just a really challenging thing in terms of changing eligibility for a program that's set up in that way.

There's no official enrollment in PSLF the way that it's set up. I think that will make it very interesting and challenging if they do end up going down that path of restricting eligibility in any way. I don't think it's come up with PSLF. There have been a few tweaks along the way, but it hasn't been where large groups of borrowers have their eligibility taken away from them before they've actually received that forgiveness.

Allie Arcese:

I was going to ask, do we know what borrowers should expect in the meantime? If you're a month or six months away from hitting your 120 qualifying payments, is it reasonable to expect that will still be processed?

Karen McCarthy:

I feel like all these things are intertwined because-

Allie Arcese:

Are they going to have the staff to process it?

Karen McCarthy:

Yeah, because you have the staffing issues going on. We also have the IDR application being down with the SAVE litigation going on, and there are people in SAVE who are hoping to get PSLF. So all of that is going on at the same time. I feel like all these things are all interconnected, so I don't think we really know.

Beth Maglione:

Yeah. Well-

Allie Arcese:

We have a lot more questions.

Beth Maglione:

... I think we've cleared a lot up here. Right?

Allie Arcese:

Not really.

Beth Maglione:

We've certainly answered everybody's questions. And you're welcome. You're welcome for all the clarity that we've brought. No, but seriously, there is so many unknowns. We know that our members are actually quite used to working inside ambiguity, it's not an area that they're unused to. But it's

particularly acute right now, which we want to acknowledge. And we will continue to tell you what we know. And when we get answers to even the most granular questions, we will share them with you. Thank you for joining us again for another Off the Cuff podcast. Please remember to subscribe and recommend us to your friends, and keep checking in with us.