

NASFAA's "Off the Cuff" Podcast – Episode 338 Transcript

OTC AskRegs Experts: ED's Proposed Regs for PSLF

Tim Maggio:

All right. Welcome to another episode of Off the Cuff. I'm Tim with our Comm Team.

Jill Desjean:

I'm Jill Desjean with NASFAA's Policy Team.

Tim Maggio:

All right. Glad to have you here, Jill. So, for the audience out there, this is my first time hosting Off the Cuff, so I know the bar is pretty high. Longtime listener, been a guest a couple years ago, so they've brought me back. So, hopefully I can meet the high expectations.

So, Jill, when I was thinking about the podcast, and I know we did a little bit of a preview into this before, is I know that y'all would kind of have some banter at the beginning. So, I kind of thought: What kind of fun could Tim bring to the podcast? And what I was thinking was, you've done webinars here at NASFAA, right? So, you know the software that we use?

Jill Desjean:

Yes.

Tim Maggio:

So, did you know that we have this new addition into our ON24 webinar software where after a webinar is done, they have some AI capabilities where it will actually produce a whole podcast about your webinar? Have you seen this?

Jill Desjean:

No. I've heard of AI podcasts, but not that we actually had the ability to do that.

Tim Maggio:

Oh yeah, it's here. Yeah, we have the capability here at NASFAA.

Jill Desjean:

Should I take the future episodes off my calendar? Like we're good to go?

Tim Maggio:

Well, that might be a question for Hugh, but I don't want to play into his job security at all. I know podcasting is a big part of what he does. But, so I was listening to this podcast, and I'm curious what your thoughts are, is I spent two minutes of my life that I will never get back listening to two AI bots talk about their desire to get better at gardening before they got into the meat of the podcast. So, do you think that our jobs are in jeopardy here?

Jill Desjean:

Huh, I definitely can't talk about gardening on a podcast. So, potentially.

Tim Maggio:

All right, so next time we'll talk about our desire to get better at gardening. But we do also have an AI survey here at NASFAA, so make sure you get that done, Jill, if you haven't yet.

Jill Desjean:

I did it, Tim. Thank you.

Tim Maggio:

Okay, great. I know we've got some topics to cover here today, and we're going to be mostly covering PSLF, right?

Jill Desjean:

That's right.

Tim Maggio:

Okay. So, Jill, imagine there's somebody at NASFAA who has not been keeping up with PSLF and all the changes and the comments. Can you give a quick recap for the folks out there who are maybe just kind of catching up on what this is and what we've done around this topic?

Jill Desjean:

Yeah. It's hard to imagine, Tim, but I will go ahead and imagine someone has not been paying attention to PSLF. So, the Department of Education recently published some proposed regulations for public service loan forgiveness changes that NASFAA recently commented on, and those regs came out of the negotiated rulemaking process that happened over the summer.

And those are in response to an executive order from President Trump that proposed to remove qualifying employer status from organizations engaged in "substantial illegal purpose". Which for the purposes of PSLF, the executive order limits to providing gender-affirming care for transgender youth, supporting terrorism, aiding and abetting illegal immigration, aiding and abetting illegal discrimination, and for certain violations of State law.

Tim Maggio:

Okay. So, some pretty big topics, some things that are pretty heavily talked about within this administration. And I know we're getting into this, but do they talk at all about how they make these determinations or how they're assessing these or who's determining what is substantial?

Jill Desjean:

Such good questions. Yes. Yeah, they talked around a lot of these things. I think that the biggest issue that at least I personally had and that we included in our comments to the Department were around this process, like who makes these determinations? We have a judicial system in this country. The courts decide who's done something illegal, right?

Congress said that organizations qualify as eligible employers if they are government agencies or if they are not-for-profit organizations. They didn't add any other "non-profit except if" ... Anything like that.

And if an organization is engaged in something illegal, we have a system to be able to address that. If a non-profit status is revoked, your PSLF eligibility goes with that.

So, there's already a way. And so, this adds a way for basically the Department of Education to make that determination that an organization has engaged in illegal activity, and we just don't really think that the Secretary of Education would necessarily be qualified to make that determination.

Tim Maggio:

Right, right. So, that just sounds like there's a ton of implications for people who are being affected by this type of decision that could happen, where this one person is given what sounds like unlimited authority to me. So, what are those implications for folks, and who's affected?

Jill Desjean:

Yeah, yeah. So, of course, right? You've got one administration now. This administration is thinking about how they want to eliminate certain employers from eligibility. We will eventually have another administration in place who will have their own ideas about which employers shouldn't have eligibility.

And so, what it does is it takes this sort of very stable system for students and borrowers who... Think about the borrower who's getting PSLF. Making a ten-year commitment working in public service to qualify for this benefit at the end of it. It's going to be really hard to convince people to commit to ten years if you tell them, "Oh, and the rules will change every four. Every time there's a new administration, an administration will target organizations whose activities they don't agree with." I can't imagine a lot of people would say, "Oh, sure, sign me up. I think that sounds great. I'll just go ahead and trust the system."

PSLF, I advised medical students when PSLF first came into being, and I remember one of the first questions I always got from students, "How do I know it'll still be there at the end of ten years?" Right? That's what gets them to commit to that public service, is knowing that the program is stable. And so, when you introduce these threats into it, you obviously make people skeptical of the program, and that just trickles down, right?

Now employers have a harder time recruiting people into public service fields because those people don't trust the system. It impacts communities, right? If you can't recruit doctors to your hospital or if you can't retain doctors at your hospital because your hospital loses status, well, people are served by your organization in your community. If you're the only game in town, now you've got gaps in services to your community. So, the impacts are really far-ranging here.

Tim Maggio:

So, is there potential future impacts that we could see from this? Any type of chilling effects? Or anything else that might be coming down the line or that people should be thinking about?

Jill Desjean:

Yeah. I think that's a great question, Tim. Because a lot of the times, and we've seen this before with different things that have come up, where sometimes you just introduce the idea of something and that's enough to bring on this chilling effect, where these rules are probably going to be challenged in the courts.

But what's happening right now, borrowers feeling like, "PSLF isn't safe for me. That's not a viable path for me. I'm going to go ahead and work in the private sector where I know I can make more money, but I know that I'll be able to pay my loans back, but I'll be working in the private sector and not doing public

service that maybe I have a calling for. Maybe I know that there's a need to do that." But just worry about what could happen even if these rules actually got overturned.

Tim Maggio:

So, if I'm understanding you correctly, there's a world in which everything kind of stays the same, but simply because this has been proposed and there's been so much coverage of it, people might have just already made assumptions that this is the rule, so they're just going to make choices based on this. Or it's made them kind of lose confidence.

They're like, "This is not worth it. Let me go for a higher-paying job." And there's just these downstream effects that are impacting daily Americans who maybe don't think anything about PSLF because maybe they're not thinking about this program, but it has really strong impacts across. That's big. Thank you, Jill.

So, we've made some comments. We have some thoughts about this, and I know we dived into this a little bit earlier. But when your team was writing through these comments and putting them together, what were the big takeaways?

Jill Desjean:

So, I mentioned already the big picture. The Department of Education just shouldn't have the authority to make these determinations. That authority is too broad. It might make the current administration happy with the decisions that they make, but then the next administration is going to come in and make other decisions. So, just that power for an administration to target organizations whose missions or activities don't align with their views is a slippery slope.

We also mentioned things like we mentioned before, the adjudication process, but we brought up the reduction in force that happened last spring. We said, A: This sounds like a lot of work for the Department of Education, and B: Sounds like something you might not be able to take on right now when you're operating with half the staff you had last spring. So, not just what is the process, but are you up to it? Can you handle it?

Because we know that we've seen disruptions in the service to financial aid administrators. We know that the Department's got backlogs and things like income-driven repayment plan processing, PSLF buybacks. So, asking about capacity I think is a very relevant question that we brought up. We also asked the Department to provide for some legacy eligibility for borrowers who were employed and on that path to public service loan forgiveness, and then their employer lost eligibility during that timeframe before they reached 120 payments.

The department had already provided for legacy provisions in the sense that your past payments don't go away, like those don't qualify. But we said: How about just for new people working at this organization that lost eligibility? Like for the people who were already there, already working there, so they don't all just flee en masse and have a situation again where communities aren't served, have some legacy provisions for them. Be-

Tim Maggio:

Jill...

Jill Desjean:

Yeah.

Tim Maggio:

For that... Because you kind of mentioned that in the current way, there's already a place that employers could lose their ability to be a PSLF provider. Does that type of allowance already exist for if that was to happen in our current environment?

Jill Desjean:

No. That's a good question. I am actually not even aware of any employers who have lost their eligibility under the current rules. I assume there's probably been a case where some nonprofit has lost not-for-profit status or maybe converted from not-for-profit status to for-profit status. But yeah, I'm not aware of it ever having happened.

But there aren't any provisions right now to protect those people. If you're working at an employer that is not eligible, your payments don't count. So, it's not no longer eligible, it's just period, once that employer is not eligible, your payments don't count toward PSLF.

Tim Maggio:

And sorry, I think there's a couple other pieces that you were going over that I interrupted.

Jill Desjean:

Yeah. No, that's okay. I think the last thing I wanted to mention was we had some problems with some of the Department's arguments that they made in the NPRM. They talked about making it easier for borrowers to track their progress toward PSLF. They talked about making the eligibility criteria more transparent, and they even said they anticipated growth in public service recruitment and retention, but they really don't support any of that in the NPRM.

There are already systems to track your payments and they work decently well. There's nothing in the NPRM that says that they're going to change any of that. The transparency there is already a list of eligible employers. And so, the list would be updated if people lost their eligibility, but that list already exists. There was no discussion of any improvements to that.

And just the idea of growth and recruitment and retention when there would be potentially fewer eligible employers just doesn't really line up. They also discuss the cost savings, and so it's like, how can you have growth and also save money? So, yeah, we just sort of called them out in a couple of areas where we said, "Your rationale here is really not backed by any evidence, and so, why are you saying these things?" So, we'll see what comes of it.

Tim Maggio:

Okay. So, we know kind of where we're at. I appreciate the catch-up and a little bit of education on all of this for those who may not be as caught up in this area. But the one thing that really intrigued me is we talked about this chilly environment, and we're still kind of in the midst of everything, so there's still more to come on this topic, right? So, what's next for this?

Jill Desjean:

Yeah. So, these are just proposed rules. So, the department put out the language, they met with stakeholders for just three days over the summer, they did not come to consensus. They put out these proposed rules as the Department saw fit, not necessarily what the negotiators wanted, because they didn't reach that consensus. They still have to publish a final rule.

So, we just wrapped up that public comment phase where the Department has to go and read all of those comments, and they do. They have to respond to all of them as well. And then they publish what's called a final rule, and that will include their responses to all of the comments that they got, and then their final decision, the change to the regulations reflecting all of this process.

And they need to publish those final rules by November 1 in order for the rules to become effective next July. There's something called a master calendar in the law that basically you need to allow for time for implementation. So, the rules say "by November 1" so that everyone who is involved has time to adjust to the new rules by the next July 1st.

Tim Maggio:

Okay. So, we should know by November 1st if any of this is going to be implemented. Is there a world in which it gets pushed back at all, or is there other avenues?

Jill Desjean:

Yeah. So, if they don't get them out by November 1st, by default the implementation becomes the next July. There's no other date. So, it's just "by November for effective July". So, if you miss November 1, then you miss the next July.

I'm sure there's always a possibility that something goes wrong, especially if we had I guess maybe an extended government shutdown that could impact this or something. But I think this is a pretty high priority for the administration. So, I would personally be surprised if these final rules were not out by November 1.

Tim Maggio:

Okay. All right. Well, thank you so much, Jill, and this week's episode is sponsored by the Diversity Leadership Program. Applications are due September 30th. Find more information in our show notes. Thanks everybody for tuning in to our episode this week. We look forward to reading your comments. Please let us know what you thought of the show and stay tuned for a future episode.