



MEMORANDUM

TO: WSC Clients

FROM: Washington Strategic Consulting

DATE: August 8, 2017

RE: The Uncertain Future of the Public Service Loan Forgiveness Program

Overview

The Public Service Loan Forgiveness program faces an uncertain future. A group of lawyers and the American Bar Association are currently suing the Department of Education for allegedly changing its position on whether the attorneys' employers qualify for the program. Earlier this year, President Donald J. Trump proposed ending the 10-year-old program, just as the first borrowers are expecting to have their college loans forgiven.

Background

The College Cost Reduction and Access Act of 2007 (CCRAA) amended the Higher Education Act of 1965 to add a new Public Service Loan Forgiveness Program (PSLF) to the William D. Ford Direct Loan (Direct Loan) Program. According to the Department of Education (DOE), the PSLF program is a "broad, employment-based forgiveness program for federal student loans."

Under the program, anyone with a qualifying public service job can have their loans forgiven after making 120 cumulative monthly loan payments (10 years) under a qualifying income-based plan. Once a borrower has made 120 qualifying payments, he or she may submit an application for PSLF to verify that he or she is employed with a qualifying public service organization. The borrower must be employed by a qualifying public service organization at the time she submits the application for loan forgiveness and when the balance on the loan is forgiven.

The program started in 2007; the first borrowers will be eligible for forgiveness in October 2017.

Eligibility

The statute defines a "public service job" as "a full-time job" in categories such as government, military service, law enforcement, **public health (including nurses, nurse practitioners, nurses in a clinical setting, and full-time professionals engaged in health care practitioner occupations and health care support occupations, as such terms are defined by the Bureau of Labor Statistics)**, public education, public interest law services, social work in a public family service agency, and other types of jobs typically associated with serving the public interest.

In response to requests for clarity on PSLF eligibility, the DOE issued a final rule in October 2008, determining that "base eligibility for the forgiveness" would be based "on the *type of organization* that employs the borrower," rather than on whether a *specific employment position* met the definition of "public service jobs." The final rule clarified that a "public service organization" refers to: (1) federal, state, local, or tribal government entities; (2) public child or

family service agencies; (3) non-profit organizations under section 501(c)(3) of the Internal Revenue Code, excluding certain religious organizations; (4) tribal colleges or universities; and (5) private organizations that provide public services, which the regulation lists. The department further clarified that “[n]on-profit organizations that do not qualify under section 501(c)(3)” of the IRC “may nonetheless qualify as a private organization that provides qualifying public services.”

In its Frequently Asked Questions on the PSLF, the DOE explains that “[t]he specific job that [a borrower] perform[s] does not matter,” because eligibility turns on whether the borrower is “employed by an eligible public service organization.”

Employment Certification

In 2012, the DOE created a system by which individuals can obtain provisional guidance on whether their employers are qualifying employers for PSLF as they work towards making the 120 qualifying payments. Under this system, individuals file an Employment Certification Form (ECF), and FedLoan Servicing – which provides services for this program under a contract with the Department – responds with a notification regarding the employer’s status.

The department encourages borrowers to submit an ECF annually while working towards making the full 120 payments, so that they may “receive feedback on the eligibility of [their] employment and payments on an ongoing basis.” However, according to the department, a borrower is not required to file interim ECFs to ultimately qualify for loan forgiveness, nor are the department’s responses to ECFs a determination of loan forgiveness.

ABA Lawsuit

In December 2016, a group of lawyers and the American Bar Association (ABA) sued over what the ABA described as the DOE’s retroactive refusal to honor loan-forgiveness commitments it had made to lawyers working in public service jobs. At issue is the question of whether nonprofit professional organizations like the ABA, which are not 501(c)3 charities or foundations, fall under the law’s definition of “public service.” According to the lawsuit, the lawyers followed the necessary steps to qualify for loan forgiveness by enrolling in the correct repayment program and filing out an ECF. The lawyers party to the lawsuit were each told by FedLoan Servicing that their employers qualified for the program, only to have that approval rescinded at a later date.

On July 31, the department filed for summary judgment to have the case to be settled without a trial. In its filing, the department argued that it has taken no final action on any of the half a million PSLF applications it has received. It may have accepted their paperwork, the filing states, but those are only “interim, non-binding, individualized determinations.” According to the filing, the ECF notification “contains language explaining that it does not represent a final decision, and in the event the employer is found not to qualify, the notice explains that the borrower may reapply and submit additional supporting evidence.”

On the question of whether employees of professional associations like the ABA qualify for loan forgiveness under the PSLF, the agency argues that “it is reasonable to impose the limitation that a private organization that ‘provides ... public services’ must be primarily in the business of providing public services, lest the regulation sweep too broadly to include private organizations for which the provision of public services is only a small part of their operations.” In keeping with that limitation, the DOE has tentatively determined that the ABA has not demonstrated that its primary purpose is public service work.

Implications

In its July 2017 filing, the DOE argued that the final decision on forgiveness is, and has always been, in the hands of the Education Department. That means borrowers will know for sure that their loans will be forgiven *only after* they have completed the 10 years of payments. The department's position signals that there are no guarantees of loan forgiveness for people who have received assurances from FedLoan Servicing, a troubling realization for the more than 500,000 people participating in the program.

Technically, in its two filings, the DOE was only responding to the narrow question about whether the small category of professional organizations is considered public service or not, but the retroactive aspect of this filing has been cause for concern.

“Thousands of young people – teachers, engineers, lawyers, doctors and more – made major life decisions based on inaccurate information provided by the department and its contractor,” said Linda A. Klein, president of the American Bar Association. “They took jobs and moved their lives based on this information. The plaintiffs followed the rules and are now paying a steep price for the department's mistakes.”

Future of the Program

Critics say the Public Service Loan Forgiveness program puts taxpayers on the hook to forgive large amounts of student debt, in part because there is no cap on the amount of debt that can be forgiven. The median debt load of those enrolled in public-service loan forgiveness is more than \$60,000, and nearly 30 percent of people who have been certified for the program have borrowed more than \$100,000, according to a 2016 analysis by the Brookings Institution.¹

In his FY 2018 budget proposal, President Trump called for eliminating the PSLF, a move that would save the federal government an estimated \$27 billion over the next decade. While this rattled many borrowers working toward public service forgiveness, DOE officials put those concerns to rest by clarifying that the proposal would affect only people taking out loans on or after July 1, 2018.

In its FY 2017 omnibus budget bill, which funds the government through September 2017, Congress rejected a majority of the Trump administration's proposed cuts. But the House FY 2018 budget resolution, released in July, includes reconciliation language that calls for \$203 billion in mandatory spending cuts over the next 10 years – \$20 billion of that coming from programs overseen by the House Education Committee. If the resolution passes, it may result in one or more of the drastic changes to student loan programs contemplated by the Trump budget, including the elimination of the PSLF.

Although the House Budget Committee approved the FY 2018 budget on a party-line vote in mid-July, it did not come to the floor before the House left for a five-week recess. Lawmakers and aides have since acknowledged that the resolution lacked the votes to pass before the August break. Even if the PSLF is not eliminated entirely, there may still be bipartisan support for limiting the program. Under the Obama administration there was a proposal to cap forgiveness at \$57,500.

¹ Delisle, J. (2016). *The coming Public Service Loan Forgiveness bonanza*. The Brookings Institution. Online.