

NASFAA's "Off The Cuff" Episode 103 Transcript

Allie Bidwell: Hey, everyone. Welcome to another episode of "Off The Cuff." I'm Allie Bidwell, one of our *Today's News* reporters.

Stephen Payne: In Stephen Payne with NASFAA's policy team.

Megan Walter: I'm Megan Walter with NASFAA's policy team.

Allie Bidwell: Megan Coval is out today. Justin is other meetings, so it is just the three of us.

Allie Bidwell: Stephen, you just said you haven't been on the podcast for a month and a half?

Stephen Payne: Yes. It's been since, I had to look it up, February 22, so I am ...

Allie Bidwell: Clearly, we've missed you.

Stephen Payne: ... stoked to be back. I've been-

Allie Bidwell: What have you been doing?

Stephen Payne: Some of the days were Hill visits. Some of the days were conferences and, for whatever reason, that all aligned on Thursdays over the past month or two, but I'm happy to be back. I missed the 100th, so I would like to say happy 100th anniversary, "Off The Cuff." I wanted to make sure that was on the record.

Allie Bidwell: What's going on in your life? Has anything changed?

Stephen Payne: Nope. Pretty standard. Pretty normal. Just thinking about... all the time about improving access and success to higher education.

Allie Bidwell: Wow. That sounds genuine.

Stephen Payne: Sorry. I was just speaking at a panel this morning, so I feel like I'm on my top panel game.

Allie Bidwell: In panel mode.

Stephen Payne: Yes.

Allie Bidwell: Anyway, we've been saying this every week for the last couple of weeks, but it has been a crazy week in D.C. We just finished negotiated rulemaking, for real finished it this fourth session. It was earlier this week. There have been more hearings which we'll talk about, all kinds of stuff, but why don't we jump in with Neg Reg? We've talked about this for a while now, and I think most of us leading up to it, when Justin has asked like, "Do you think they're going to reach

consensus?" we were all like, "No. No way," and ... but they did, so we were all wrong.

Stephen Payne: Yeah. It's crazy, right? I mean, if you think about the bucket of issues that they were negotiating this go-round, and they're so disparate, right?

Allie Bidwell: There was the big bucket and then the three little buckets.

Stephen Payne: Yeah. Yeah, so you have all these accreditation issues, all these innovation issues, faith-based entities, let's throw that in there, TEACH Grants, distance learning. I mean, all of these things are all important and controversial in their own right, and then to put them all together seemed like it was going to be difficult to find consensus, which is why the department pursued this buckets approach because I think they thought, "Well, we're not going to get to consensus on the whole thing."

Allie Bidwell: They got so much pushback in the beginning, too, being this is ... I mean, normally, we've said this before, you have one topic like gainful employment or borrower defense, and those are hard enough on their own, and I feel like it always comes down to the wire the very last couple of minutes whether they're going to reach consensus or not, so, Wednesday, they were doing their voting, going through last-minute regulatory language changes, crossing T's, dotting I's, and then they started voting, and the first bucket that they passed was on TEACH Grant and faith-based entities, and they passed distance education, state authorization and ... Something else was in that bucket. I don't remember what the third thing was.

Allie Bidwell: The third and probably most controversial bucket was the one with accreditation credit hour, that sort of thing, and that one they didn't ... They had three minutes left. They passed it with only three minutes to spare, and then they literally popped champagne in this conference room where Neg Reg was being held, yeah, and they took a group picture. It was a little weird. I'm not going to lie.

Stephen Payne: Yeah, so there are some folks who are critical online saying that ... some folks representing more of the consumer groups saying that there really wasn't a lot of consumer voice in this process and that this is like a phony consensus and there actually wasn't really consensus, but it is honestly surprising that all of the packages, the buckets if you will, were agreed to, and the whole thing was agreed to, and there is this underlying tension of if the committee agrees and reaches consensus, then the department's hands are tied, and so that provides different levels of motivation to come to an agreement to say like, "Well, we would rather have it this way than whatever the department will end up at." Now, whether that means ... and I think some folks have been critical of that, maybe that means that folks were just trying to ...

Allie Bidwell: Settle.

Stephen Payne: ... settle on this, but that's the dynamics I guess of Neg Reg so.

Allie Bidwell: Yeah, and another thing that was pointed out by ... I mean, I saw at least one person who said this was ... They're still questioning the idea of even using the bucket system that they started this session, because they've never done that before, and questioning the legality of it, so, I mean, I guess it is possible, too, that this Neg Reg could be challenged in court maybe.

Stephen Payne: I guess now that they're not ... since everything reached consensus anyway-

Allie Bidwell: Does that just wipe out any-

Stephen Payne: I don't know. I don't know the legality of it.

Allie Bidwell: Yeah, we haven't had consensus in a while on a Neg Reg. Cash management or something, maybe it was. Did that reach consensus? I don't know. Write to us and let us know. My brain is just ... I don't know if I even have a brain right now.

Stephen Payne: Yeah. Allie, so you have been tracking Neg Reg ...

Allie Bidwell: Karen McCarthy from our policy team has been there.

Stephen Payne: Karen on our team is an alternate in this negotiated rulemaking session, and they added a week, which was this week, this past week. I guess it was about a half of a week, but it was, what, eight to six.

Allie Bidwell: Eight to six. Normally, they're like nine to five. The last date, Wednesday, was eight to three. Yeah, and the last session, they extended the days to eight to six because I think they missed a half a day or a full day due to snow. Again, that happened a couple of times this winter, which I don't know if they're limited to this because of the master calendar, but maybe don't do Neg Reg in the winter. Can we do that?

Stephen Payne: Right. No, it's a fair point of something that ... Especially when you have a whole week at a time, the odds of some storm coming up are probably pretty high. I would like to say on TEACH Grants, because I was on the TEACH Subcommittee, that I'm really pleased with the agreement there and appreciative of the department for coming to the table and thinking more about folks who had conversions in the past and thinking about a way to provide some pathway for those folks to flag to say, "Hey, my grant was improperly converted to a loan and I can demonstrate that I met the teaching requirements inherent in my service obligation," or, alternatively, "It was improperly converted, and I want my service clock to be able to be reset."

Stephen Payne: I mean, if you dig into the numbers here, and GAO and public citizen through FOIA request put out a ton of information on the behind-the-scenes of TEACH and the conversion rates and all of that, and it's just bad, for lack of a better

word, and the places where ... particularly before, so before 2013, their Xerox/ACS was the servicer of TEACH Grant, and there were a ton of conversions that just happened.

Allie Bidwell: Xerox?

Stephen Payne: Yeah. That happened just-

Megan Walter: Like the printing thing?

Allie Bidwell: Yeah. I don't know. I remember ACS. That was my Perkins loan servicer for a while.

Stephen Payne: Yeah.

Megan Walter: Did they say how many were converted students while were in school?

Stephen Payne: In some of these FOIA documents, for example, what happened was, once the servicer was no longer Xerox/ACS, PHEAA, doing business as FedLoan, did an analysis of the portfolio and found that there were 15,927 erroneous grant-to-loan conversions.

Allie Bidwell: Wow.

Megan Walter: What?

Stephen Payne: That's affecting 10,776 recipients, and if you look at the reasons why in the PHEAA analysis, you'll see that there were 19% that were converted in error within one year of graduation date, 15% converted while the recipient was in enrolled in a program ...

Allie Bidwell: That's crazy.

Stephen Payne: ... and those were the top two reasons, and that adds up to ... About 45% of these cases are just converted while the recipient was in a program and within a year afterwards.

Allie Bidwell: That's crazy because they have eight years to complete ...

Megan Walter: Right.

Stephen Payne: Right.

Allie Bidwell: ... four years of service.

Stephen Payne: All that said, there was a lot of motivation behind making some big changes, and there's ... Also, the department has made sure to let us know there are at least six pending lawsuits on TEACH, and ...

Megan Walter: I'm not surprised.

Stephen Payne: ... so there's certainly a lot of opportunities for improvement in this space, and I'm grateful the department was willing to be so open, but also certainly there were a number of reasons why there needed to be some big fixes, so that's one key piece of it. That's what-

Allie Bidwell: There was like some big wins there.

Stephen Payne: Yeah, I really think so.

Megan Walter: Absolutely.

Allie Bidwell: Karen made sure that the regulatory language specified things, with the suspension of the service period, if they had completed some service during that time, to count that, but exclude the rest and to take into account a ton of different situations.

Stephen Payne: Exactly, and, for NASFAA's part, I think ... and I think everyone has really aligned, schools and consumer groups and others, that there needs to be a robust remedy process here for folks because of the number of errors. There's a number of errors that are discussed in all of these different reports that some of them they've lost paperwork and they don't have good information about what actually was converted in error. Maybe they lost information on the conversion date, so they can't tell if there was an error or not, and so you really need to make sure there's a process here for folks to be able to demonstrate that they did in fact ... at the very least are interested in pursuing their service requirement if they haven't already, and I'm so grateful that for. Of course, it brings up broader conversations about programs that are designed like this and whether there are shortfalls in the grant-to-loan, the "groan" concept ...

Allie Bidwell: Groan.

Stephen Payne: ... broadly speaking.

Allie Bidwell: That's a great way to describe it.

Stephen Payne: Yeah.

Allie Bidwell: It is a "groan," so definitely some good things coming out of Neg Reg, some things that maybe we have yet to see how they will play out, but the department will be putting out a pseudo notice of proposed rulemaking,

because it's not exactly proposed and, if they came to consensus, it will still be put out for public comment, so definitely stay tuned to *Today's News*.

Stephen Payne: Then the timing from there, so they need to make sure that they have ... and they didn't do this in the last regulatory package ... make sure it's out by November 1st so that it can go into effect by July 1, 2020.

Allie Bidwell: Right. Whatever happened to borrower defense and gainful employment? They're just-

Stephen Payne: Right. They're just floating out there.

Megan Walter: Yeah.

Allie Bidwell: Both of the NPRMs came out, and then nothing.

Stephen Payne: Yeah, so maybe this whole process of reaching consensus frees up some time to finalize some of these other regulatory packages. I don't know.

Allie Bidwell: It sounds like they have ... I mean, they have a lot on their hands so.

Megan Walter: Absolutely.

Stephen Payne: Yes.

Allie Bidwell: Yeah. Other things going on this week, there was ... We've been just rolling through higher ed hearings lately. The last three weeks has been like bam, bam, bam, but there was another one, Megan, that you covered on accountability. Do you want to catch us up on that?

Megan Walter: Sure. Yeah, so, yesterday, the House Subcommittee on Higher Education and Workforce Investment held a hearing looking at the current state of accountability in higher education as well as what changes could be made to improve the process. This is a pretty important convo happening as more frequent school closings were seen happen as well as HEA possibly getting reauthorized this year.

Megan Walter: A lot of the conversation was of questions that were asked to the witness panel about what they would like to see improved, and it was interesting because none of them really had concrete ideas for the way they would change it. They just said like, "These are the things we don't like about it," or, "These are the things that are getting through the cracks." They didn't really have any concrete examples of how they would change the process for the committees, and it'll be interesting to see who the witness panel is for next year ... next week when the Senate has accountability hearing as well and see if they get any different responses from the panel.

Allie Bidwell: Yeah, and this is something we've been seeing as they go through HEA reauthorization. It's like people agree, yes, there needs to be improvement with regard to accountability and holding institutions accountable for the outcomes of their students, but no one really can agree on how to go about doing it.

Megan Walter: Exactly. That was-

Stephen Payne: I caught a good bit of the hearing yesterday, and I felt like there seemed to be a lot of conversation about for-profit institutions and just like ... It seemed like a lot of people were just, for lack of a better word, yelling at about it on both sides saying like, "For-profit schools are bad, and let me list out all the stats," and then on the other side, you have now Ranking Member Foxx saying, "This is disgusting that everyone's picking on this one sector," and I'm just sitting there thinking, "What are the, what are the policy proposals and recommendations that we're really gleaning from this hearing?" That's how I feel generally. This is my cynical view coming through right now especially when we've had so many hearings lately, but it's like are we just going through the motions here with-

Megan Walter: What's actually coming from them.

Allie Bidwell: Yeah.

Megan Walter: Yeah, it felt a lot like when they were beginning their speeches. They were just on the soapbox. I see them talk about how we shouldn't judge sectors separately or how we should, and it wasn't very helpful or informative.

Allie Bidwell: I mean we were-

Megan Walter: People already have their opinions on it.

Allie Bidwell: Yeah. Talking about that, too, how these hearings ... It's like 80% just political theater and 20% actual questions and-

Stephen Payne: Yeah. It's totally this whole idea of political theater. When you think about it, one of my favorite lines that members say at hearings is, "I'm sorry. I missed all the previous questioning, so apologies if you already answered this," and then they just ...

Megan Walter: They did.

Stephen Payne: ... ask their questions, and it's like the same stuff.

Allie Bidwell: Yeah, because they pop in and out.

Stephen Payne: Yeah, and I get it. I don't expect everyone to be there the whole time.

Allie Bidwell: Right.

Stephen Payne: I think that's always one of the things that's most surprising to people who see a hearing for the first time in person. You'll see people going in and out, and they're like, "No one's there half the time."

Megan Walter: Yeah.

Allie Bidwell: That's why they don't do the wide screenshots of the ... where the lawmakers are sitting because half the time there's just no one there.

Stephen Payne: If you think about these ideas that we've been surfacing, we had an accountability hearing this week, and now we're going to have one in the coming days in the Senate, and I'm sure we'll raise similar ideas and ... I don't know. It's just interesting. We're exploring a lot of the same ideas and, in the Senate, there was a FAFSA simplification hearing a few weeks ago, and there was one about a year before that, and we're revisiting these ideas and-

Allie Bidwell: It's like you have to when there's a new Congress. It's just part of going through the motions of things that you need to do because there are new people coming in and off each of these committees, but Senator Alexander on the Senate Education Committee always likes to list off exactly how many higher ed hearing they have had over the last couple of years.

Stephen Payne: Yeah, it's a lot. It's been a lot.

Allie Bidwell: I think the last count was 29 or something crazy like that. Yeah.

Stephen Payne: Right, and their impact is certainly very different than I feel like they have been in the past in some ways because they're so ... They're all trying to cram in so much into these first few months because they want to do HEA, and there has to be time and you're pressing up against it. If you get too close to the presidential elections, the whole thing ...

Megan Walter: Unravels.

Allie Bidwell: Yeah.

Stephen Payne: ... disintegrates.

Allie Bidwell: You might as well just toss it out again.

Stephen Payne: You have to get everyone up to speed, like you said, and it used to be some of these hearing were like you would know about it a month in advance, and then it would be like-

Allie Bidwell: Yeah.

Stephen Payne: It would be a big event.

Megan Walter: I feel like these pop up like a day.

Stephen Payne: The accountability hearing ...

Allie Bidwell: Yeah.

Stephen Payne: ... there were-

Megan Walter: It's like, "It's tomorrow."

Stephen Payne: There were probably, what, 10 people in the room? Five people?

Megan Walter: If ... Yeah.

Stephen Payne: When they do the wide shot of the folks in the room, and there weren't many people there though, they had to interrupt the hearing in the middle for ...

Allie Bidwell: The NATO speech.

Stephen Payne: ... the speech from ... The head of NATO spoke on the House floor before a joint session of Congress yesterday so.

Allie Bidwell: Oh, man. Yeah, and now it's like a Tuesday, and they're like, "This Thursday, we're going to have a hearing."

Stephen Payne: Right.

Allie Bidwell: Yeah.

Stephen Payne: Speaking of-

Allie Bidwell: Next week, we have a couple of other hearings. Megan mentioned the accountability hearing in the Senate and then, also, over in the House, Secretary DeVos is going to be making another appearance, which is like ... I mean, this is a lot. She never used to go up to The Hill.

Stephen Payne: This would be like three hearings within the span of a month for her.

Allie Bidwell: Yeah.

Megan Walter: Yeah.

Stephen Payne: It will be really interesting to see this hearing because it's a little different from the previous two. She testified in the House and the Senate, but before the appropriations committees. Cabinet secretaries do this all the time, talk about their agencies' budget and what they requested and, normally, the other party grills them on X, Y, Z items in the budget. There's sometimes some oversight

questioning, but, typically, it really is focused on the budget, but, with this hearing, we do anticipate there being a lot of more oversight-oriented questions.

Stephen Payne: This is what we talked about after the midterm elections where it's like there's significant ... There are significant ramifications for losing control of the chamber in Congress when you're the opposition party because, now, you can bring the cabinet secretary in front of the full committee and you can ask whatever questions you want. They're more likely to answer your letters, and so there's just a different role of oversight now, and so this hearing I think will be very interesting.

Allie Bidwell: Right, so this will be before the full House Committee on Education and Labor, so I guess the floodgates are open, like you said, for whatever they want to ask her about.

Stephen Payne: Yeah, it'll be interesting. I anticipate a lot of questions about all of the regulatory issues. A lot of Democrats brought those up in their questions about what's going on with borrower defense. I think that will be a big one. There were a lot of members, a lot of new members, who talked about this current negotiated rulemaking session and about accreditation and about ensuring there are guardrails and ensuring we're not opening the floodgates to bad actors and all of that.

Megan Walter: Right, manipulating the systems.

Stephen Payne: Yeah.

Megan Walter: Yeah.

Stephen Payne: Then what's interesting is when you see people from the same party then questioning the cabinet secretary, and this is the same on both sides, and this was the same in the Obama administration, and it'll be the same next week with Secretary DeVos, but the questions are such softballs like, "Tell me more about what you think about charter schools?" and just things like that. It gives them a chance I think to catch a break. Honestly, I think that's a big part of it ...

Allie Bidwell: Yeah, I'm sure.

Stephen Payne: ... but they don't want to create soundbites because, as we saw over the past few weeks, talking ... Secretary DeVos was talking about the Special Olympics. It's so interesting to think about what catches fire in the media, and I'm sure ... I'm going to guess. I don't know what the schedule is on The Hill that morning, but I'm going to guess this might be a C-SPAN hearing particularly because there's been a lot of attention around Secretary DeVos.

Allie Bidwell: They have a strict media RSVP for this one.

Stephen Payne: Interesting. Yeah. Okay.

Allie Bidwell: Yeah. Usually, you can just show up, but, this one, you have to RSVP and you have to have actual Hill press credentials.

Stephen Payne: Interesting.

Allie Bidwell: Yeah, like you said, I mean, it could be K-12. It could be higher ed.

Stephen Payne: Yeah.

Allie Bidwell: The world is our oyster.

Stephen Payne: Yeah.

Allie Bidwell: I can't believe the Special Olympics thing was just last week.

Stephen Payne: That feels like a month ago.

Allie Bidwell: Yeah. Yeah. That was a rough week to be Secretary DeVos.

Megan Walter: Absolutely.

Stephen Payne: I mean, coming off a lot of momentum from the negotiators reaching consensus, and she spoke at-

Allie Bidwell: She did. Yeah, she came on Wednesday during the final day of negotiating and just thanked the negotiators for all their work. Undersecretary Diane Jones also made several appearances and actually for a bit came to the negotiating table not just to make remarks, but to also help facilitate the discussion, so ... which you don't always see. I mean, in the Obama administration, a couple of times, I think the Undersecretary then, Ted Mitchell, came here and there, so, yeah ... but I don't think we ever saw Arne Duncan at a Neg Reg. Yeah.

Stephen Payne: We saw a few additional members of Congress come to ... Some of the newer members are getting involved in that space, too, which is interesting.

Allie Bidwell: For public comment.

Stephen Payne: Yeah.

Allie Bidwell: Yeah. Anyway, lots going on as usual. Thank you, everyone, for joining us again for another episode of Off the Cuff. Send us your questions, comments, suggestions. Subscribe, tell a friend, and we will talk to you next week.